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ABSTRACT

This report describes recent gains in support for the movement to allow parents to choose the public school which their children attend. Reasons for the movement's growth and methods of implementing school choice plans are presented. The paper then focuses specifically on interdistrict school choice plans, identifying major aspects which are likely to affect special education programs and the ability of students with handicaps to participate in these types of choice programs. Five major issues are discussed: (1) responsibilities of the resident district; (2) criteria for student admission to nonresident school districts; (3) due process; (4) finance; and (5) transportation. The report discusses each of the major issue areas as they relate to special education and describes how each area has been addressed in five states with interdistrict choice plans (Arkansas, Iowa, Minnesota, Nebraska, and Ohio). A final section summarizes, by state, the provisions included in each state's legislation. An appendix reprints the school choice legislation of each of the five states. Includes two references. (JDD)

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PUBLIC SCHOOL CHOICE: IMPLICATIONS FOR CHILDREN WITH HANDICAPS

Revised
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IMPLICATIONS FOR CHILDREN WITH HANDICAPS

Fran E. O'Reilly

for

The National Association of State Directors of Special Education

Revised
February, 1990

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Introduction

Traditionally in the United States, value has been placed on assuring access to educational opportunity through a strong public school system administered locally and responsive to the community in which each system is located. Generally, children attend their neighborhood school unless bussing to more distant district schools has been implemented to achieve racial balance. Until recently, parental choice regarding where a child will be educated has been limited to a choice between the neighborhood public school and a private or parochial school.

In the last half of this decade, options for increased choice in education have received considerable attention, as the nation has seized on school choice as an approach to address concerns raised by the educational reform and excellence movements of the 1980's. Three major goals of the school choice movement have helped it to gain broad political support. First, school choice is hailed as a promising method for ensuring parental involvement in the public schools (parental involvement). Second, it is believed that increased competitiveness brought about through a free market system of public education will force schools to either improve or close down for lack of students (school improvement), and third, school choice can provide a measure of equity for families who because of their socioeconomic status do not have access to the schools they want for their children (equity). In addition, proponents of the school choice movement maintain that restructuring of the public school system is necessary to address the changing and diverse student population who cannot all be served through a standardized educational system.

Choice in public education can be applied in many areas, such as program content, instructional methodology, and choice of teachers, specific programs, schools, or school districts. Among these areas, parents may be choosers for their children, or teachers may be allowed to choose a specific instructional methodology or school. Among the 24 States that have passed legislation to expand public school choice on a statewide basis, both inter- and intra-district choice plans have been developed, as well as plans involving postsecondary institutions (Nathan, 1989). Six general methods have evolved, with some overlap among approaches: (1) interdistrict choice; (2) "second-chance" programs; (3) postsecondary enrollment options; (4) controlled choice; (5) teacher-initiated schools; and (6) magnet schools.

- *Interdistrict school choice* allows families to choose to send their children to a public school in a district other than the one in which they live. This type of plan expands options for students and families, and promotes interdistrict competition.

"Second-chance" programs are designed for students who have not been successful in traditional school settings. Some of the existing "second-chance" programs allow eligible students the following types of options: (1) attendance in another school in their home or a different public school district; (2) choice of an alternative education option in their own or another district, and (3) enrollment in a postsecondary institution.

Postsecondary enrollment options programs enable high school students to take courses for high-school or college credit (or both) at a college or university, or at a vocational/technical institute.

A *controlled choice* plan is an intradistrict option which requires families to choose the school their child attends. Families select from among all the schools at a child's grade level within the child's home district. Many school districts use controlled choice plans to implement voluntary desegregation efforts.

Another intradistrict option, *teacher-initiated schools*, allows staff who share a common philosophy to cooperatively manage schools under district guidelines. Under this plan, families choose the school their child will attend, within the child's home district. When teacher-initiated schools have been designed within a district, the traditional school environment becomes only one option from which families may select.

A third intradistrict program, *magnet schools*, provides an opportunity for families to select schools within a district that employ a specific educational philosophy such as the Montessori method, or focus on a special curricular aspect such as the arts or science. Magnet schools have open-enrollment policies, and have become standard practice for implementing desegregation plans.

Development and implementation of a school choice plan requires that a number of critical areas be addressed, such as finance, admissions policies for student access to non-resident districts, employee assignments, transportation, curriculum standards, and dissemination of information to parents to enable them to make informed decisions. Much of the recent school choice literature has described these issues in some detail (see in particular, ECS, 1989), but little has been written about the potential implications of parent choice options for the education of children and youth with handicaps. This is not surprising, as most of the school choice plans (except for "second-chance" programs) have been designed to improve and increase the educational opportunities for the majority school population, students in general education programs. Nevertheless, discussions with State and local special education administrators in States which have recently enacted interdistrict school choice plans suggest that certain aspects of choice programs, either in theory or practice, may have implications for the administration of special education, and potentially, for the protection of rights guaranteed under Federal and State laws governing the education of students with disabilities.

The purpose of this paper is to identify major aspects of interdistrict choice plans which are likely to affect special education programs and the ability of students with handicaps to participate in these types of choice programs. The information presented here is not intended to be an exhaustive review of the issues which are likely to impact special education students and programs. In fact, interdistrict choice is a relatively new phenomenon, with many plans experiencing first year implementation during the 1989-90 school year. Thus, it is likely that some issues are yet to arise, while some of those which were anticipated will turn out not to be important. Because of the recency of the

school choice movement, only interdistrict plans were examined for this paper as it was undertaken as an exploratory analysis. It is possible that future analyses will consider the potential implications of a broader range of school choice programs.

In discussions with special education administrators in five States that have recently implemented interdistrict choice plans, five major issue areas emerged as potentially important to children with handicaps: (1) responsibilities of the resident district; (2) criteria for student admission to non-resident school districts; (3) due process; (4) finance; and (5) transportation. Several of these issues, most notably admissions criteria, finance, and transportation, are not issues specific to special education. However, there are certain aspects of these areas which need deliberate consideration because of Federal laws and regulations governing programs for children and youth with handicaps.

The following section briefly discusses each of the major issue areas as they relate to special education and describes how each area has been addressed in five States with interdistrict choice plans (Arkansas, Iowa, Minnesota, Nebraska, and Ohio). A final section summarizes within each of the five States, the provisions included in the choice statute for each issue area. The text of the school choice legislation and any available implementing regulations enacted in the five States are appended.

Major Special Education Issues

Resident District

The Education of the Handicapped Act (EHA) requires that each local educational agency assure that funds received under the Federal special education program will be used for costs attributable to programs for all children with handicaps residing within the jurisdiction of the local education agency. 20 U.S.C. Sec. 1414(a)(1)(A). Similarly, regulations implementing Section 504 of the Rehabilitation Act of 1973 (Section 504) provide that recipients of funds must provide a free appropriate public education to each qualified handicapped person in the recipient's jurisdiction. 34 C.F.R. Sec. 104.33(a). Thus, the resident district has ultimate responsibility for ensuring that all students with handicaps who reside in its jurisdiction receive a free appropriate public education in accordance with these Federal requirements.

Under an interdistrict choice plan where a student elects to attend a school district outside the resident district, it is not clear if the resident district would still be responsible for assuring the provision of a free appropriate public education, or if this responsibility can or should be transferred to the district where the student receives services. Resolution of this issue has important implications for a number of other areas. For example, which district is responsible for assuring that a student is placed in the least restrictive environment? Should the sending or receiving district be responsible for development and implementation of a student's individualized education plan? If due process proceedings are implemented, which district is accountable? Some of these

areas will be explored more fully below. Note that at the current time, the issues surrounding the responsibilities of the resident district are under study by the U.S. Department of Education's Office of Special Education and Rehabilitative Services (OSERS).

For the five State interdistrict choice plans examined here, Table 1 illustrates that only the plans in Iowa and Nebraska include provisions in the area of resident district responsibility for special education students although Minnesota addresses the resident district issue in separate State Board of Education rules. Among these three States, the provisions vary -- Iowa's plan stipulates that responsibility for insuring an appropriate program for a special education student rests with the resident district while in Minnesota responsibility rests with the non-resident district. In Nebraska students are to be treated as resident students of the receiving school district, implying that responsibility rests with the receiving district as in Minnesota.

Admissions Criteria

Regulations implementing Section 504 state that "no qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives or benefits from Federal financial assistance". 34 C.F.R. Sec. 104.4(a). All school districts receive some Federal financial assistance for a variety of education programs such as special education, impact aid, or compensatory education, and are thus compelled to comply with this requirement. In addition, under the Education of the Handicapped Act, States are required to implement policies and procedures which insure that the State has a goal of providing "full educational opportunity" to all handicapped children aged birth through 21. 20 U.S.C. Sec. 1412(2)(A). These two requirements suggest that students with handicaps must be afforded the same opportunity as nonhandicapped students to participate in school choice plans. This has important implications for the admissions policies implemented as part of most interdistrict choice plans.

Interdistrict choice programs commonly include a set of criteria to be used by a district to determine if students from outside their jurisdiction are eligible to attend the selected district, as well as a list of reasons for which student attendance can be denied. Some of the more typical criteria are that the racial balance of the sending and receiving district must not be jeopardized by student transfers, and that students will be admitted to specific programs (e.g., school for the arts, science magnet school) only until the program is filled to capacity. It is not clear whether such criteria could be developed to limit access of students with handicaps or if these limitations would be prohibited by the non-discrimination requirements of Section 504 or would be in conflict with the full educational opportunity goal of EHA. It seems clear that students with handicaps must be provided with the same opportunity as non-handicapped students to attend their school district of choice, but what is not clear is if such students can be denied access through any criteria which are associated with their handicapping condition. That is, can a student's handicapping condition be considered in the decision of a non-resident district to accept or reject the student? For example, can a student

TABLE 1

RESIDENT DISTRICT PROVISIONS OF SELECTED SCHOOL CHOICE PROGRAMS

Arkansas	Not Addressed
Iowa	Resident district is defined as the district of residence of the parent or guardian. Proposed rules state that responsibility for insuring an appropriate program for a special education student rests with the resident district.
Minnesota	Resident district is not defined in the Minnesota choice statute. However, State Board of Education rules assert that the providing district is responsible for assuring the provision of an appropriate program for a student placed through education choice options.
Nebraska	Students opting to attend a nonresident district, including special education students are to be treated as resident students of the receiving school district.
Ohio	Not Addressed

with handicaps who requires resource room services be denied access to a district if the resource room teacher is already serving the maximum caseload? Would the receiving district be obligated to hire another resource room teacher?

The questions related to program capacity are tied to the issue of resident district responsibilities, because if a sending district can transfer to a receiving district all of the responsibilities of providing a free appropriate public education to children with handicaps, then presumably the receiving district would be obligated to provide to a transfer student with handicaps an appropriate special education program, and could not reject the student because of capacity limitations. On the other hand, if capacity limitations apply to programs for non-handicapped students, it may be within the constraints of Federal requirements to apply similar limitations to programs for students with handicaps.

Some of the issues related to admissions policies will vary depending on whether the choice plan allows choice of districts, choice of specific schools within districts, or choice of specific programs. A summary of the admissions criteria affecting students with disabilities as included in the five selected State choice plans is provided in Table 2. As shown in the table, four of the five State interdistrict choice plans (Arkansas, Minnesota, Nebraska, Ohio) require districts to adopt admissions criteria which may not include handicapping conditions.

Table 2 also indicates that in three States, Iowa, Nebraska, and Ohio, requirements for admissions criteria explicitly address the availability of appropriate programming for students requiring special education. Nebraska's provisions are not specific, but Iowa's plan stipulates that requests by a special education student to attend a non-resident district can be approved only if the receiving district can provide an appropriate program. In Ohio, a district may refuse to admit a special education student if the services described in the child's IEP are not available.

Finance

The financing of school choice plans is critical, regardless of whether students with handicaps participate in such programs. However, finance is of particular importance for students requiring special education and related services because such programs are usually more costly than the average general education program and because both the Education of the Handicapped Act [20 U.S.C. Sec. 1401(18)] and Section 504 regulations [34 C.F.R. Sec. 104.33(c)] require that an appropriate public education be provided at no cost to eligible individuals with disabilities.

Under an interdistrict choice plan, the question arises as to which jurisdiction, the sending or receiving district, is financially responsible for the provision of a free appropriate public education to students with handicaps. The answer to this question would be provided, in part, by a determination of whether or not a sending district could transfer their responsibilities of providing a free appropriate public education to a receiving district, but typically interdistrict school choice plans expressly delineate the financial responsibilities of the sending and receiving districts. Commonly, a sending

TABLE 2

ADMISSIONS CRITERIA AFFECTING STUDENTS WITH DISABILITIES

Arkansas	Districts must adopt standards which may not include handicapping conditions.
Iowa	For special education students, transfer requests can be approved only if the receiving district can provide an appropriate program and enrollment of the child in the program would not cause maximum class size to be exceeded. Proposed rules provide that if appropriateness of a program is in question, the student would remain in the resident district until a final determination is made.
Minnesota	Districts must adopt standards which may not include handicapping conditions.
Nebraska	School districts must adopt standards which may include availability of appropriate special education programs, but may not include handicapping conditions.
Ohio	Admissions standards adopted by school districts may not include handicapping conditions, but a district may refuse to admit a special education student if the services described in the child's IEP are not available.

district is required to transfer to a receiving district all State aid received for students that are attending the non-resident district.

As most school choice programs are aimed at general education students, special financial considerations are not always included to address students for whom program costs are above the costs of the average general education program. This raises many additional issues, such as who should be responsible for making up any difference in the cost of programs between the sending and receiving district? Will the receiving district be able to provide an ideal program rather than an appropriate program, at the expense of the sending district? Also, if the school choice plan calls for the provision of supplementary State funding to cover any additional cost of the education of transfer students, will special education programs be eligible for these funds? Will supplementary aid be available to both sending and receiving districts? What are the implications for small districts which may lose so many resources (e.g., funding, personnel) that their ability to adequately plan, provide, and pay for services to the students who remain is significantly curtailed?

A separate finance issue has to do with the compatibility of the special education funding mechanism with the interdistrict choice plan, particularly for programs which require that the sending district provide a per pupil allotment to the receiving district. To accommodate this, the special education funding mechanism must be able to readily account for program or per pupil costs.

Table 3 summarizes the financial provisions included in the five State choice plans as they relate to special education students. The table indicates that only Minnesota's choice plan does not specify financial arrangements for students with disabilities although other legislative language in Minnesota addresses this area for students receiving special education services. As Table 3 indicates, the financial provisions vary across the five States. This is not surprising as the financing of State choice plans must be tailored to each State's school finance program.

Due Process

Under EHA, parents of children with handicaps are afforded a number of procedural safeguards, including specific identification, evaluation and placement procedures to be followed in determining an appropriate program for a student with handicaps. Further, parents of children with handicaps have the right to an impartial due process hearing, and civil action if necessary, to present complaints with respect to the identification, evaluation, or educational placement of their child or the provision of a free appropriate public education to their child. 20 U.S.C. Sec. 1415. Section 504 regulations include similar requirements. 34 C.F.R. Sec. 104.36. These Federal requirements provide to parents of children with handicaps the opportunity to participate in decisions regarding the special education and related services provided to their child.

TABLE 3

FINANCE PROVISIONS AFFECTING STUDENTS WITH DISABILITIES

Arkansas	Student is counted as part of average daily membership of receiving district. Any add on weights which a student may generate are transferred to the district of attendance. Presumably this includes weights for students with disabilities.
Iowa	For special education students, the resident district must pay the actual costs incurred by the transfer district in providing the appropriate special education program.
Minnesota	Financing for students with disabilities is not specifically addressed in the choice statute, but other statutory language and State Board of Education rules require that a resident district pay the excess cost of a special education program provided to a student with handicaps enrolled in a non-resident district through the open enrollment program.
Nebraska	For financial purposes, students are counted by the resident district which must remit state aid to the receiving district. The State Department of Education will reimburse receiving districts for any excess costs of special education programs provided to transfer students.
Ohio	In distributing State education aid, payments are made to school districts for each non-resident student enrolled, including the excess costs for any student receiving special education and related services.

Federally mandated special education evaluation and placement procedures, as well as the parent role in decisionmaking may or may not be compatible with interdistrict school choice plans. One notable conflict is with EHA regulations which require public agencies to insure that each handicapped child's educational placement is as close as possible to the child's home. 34 C.F.R. Sec. 300.552. This requirement could limit the ability of students with handicaps to participate in interdistrict choice programs.

Some issues related to interdistrict choice and Federal due process requirements are linked directly to the area of resident jurisdiction responsibilities. That is, which agency, the sending or receiving district, is responsible for ensuring that the Federal due process requirements are appropriately met? There are other important issues related to due process which vary by State, because of the difference among States in the latitude accorded parents in the school choice program.

For example, some State plans allow families to choose among public school districts within the State, while others allow for selection of a particular school or a specific program among all public school districts within the State. In States where parents can select a specific program there may be conflicts with Federal placement and evaluation procedures for students with handicaps as provided under EHA [34 C.F.R. Sec. 300.530-300.534] and Section 504 regulations [34 C.F.R. Sec. 104.35]. For example, there may be conflict between the recommended placement determined by the resident and/or receiving district and that selected by the student's family. Are districts legally obligated to comply with a parent's program selection? If so, who is accountable for Federal and State requirements such as least restrictive environment? If not, which district is responsible for resolving any conflict? Must the sending district concur with the placement of the receiving district? What are the financial ramifications likely to be if districts are required to comply with unilateral parent placement decisions?

For this area, Table 4 summarizes the provisions included in the five selected State choice plans. As the table shows, both the plan in Iowa and separate State Board of Education rules in Minnesota address this area. In Iowa, proposed rules would require a resident district to be responsible for insuring the provision of an appropriate program for a special education student. Conversely, State Board of Education rules in Minnesota require the providing district to be responsible for assuring the provision of an appropriate program. As noted on Table 4, the Nebraska choice statute indirectly addresses the due process area by requiring transfer students to be treated as resident students. This implies that as in Minnesota, the receiving district would be responsible for meeting Federal due process requirements. It is not clear whether Federal provisions allow due process responsibilities to be transferred to the non-resident district.

Transportation

The issues surrounding transportation for students with handicaps and interdistrict choice plans are associated with resident district responsibilities and with the financial issues described earlier, as Federal special education requirements mandate that school

TABLE 4

DUE PROCESS PROVISIONS OF SELECTED SCHOOL CHOICE PROGRAMS

Arkansas	Not Addressed
Iowa	Proposed rules stipulate that the resident district is responsible for insuring that an appropriate program is maintained for an open enrollment special education student.
Minnesota	The area of due process is not addressed in the open enrollment statute, but State Board of Education rules state that the providing district is responsible for assuring that an appropriate program is available for a student placed in a non-resident district through education choice options, including the notice and hearing provisions.
Nebraska	The area of due process is not addressed explicitly, but the Nebraska choice statute states that option students must be treated as resident students. If allowed by Federal requirements, the receiving district would be responsible for due process provisions.
Ohio	Not Addressed

districts are responsible for providing and paying for specialized transportation required by students with handicaps as part of the student's free and appropriate public education. 20 U.S.C. Sec. 1401(17) and 34 C.F.R. Sec. 104.33(c)(2). Thus, all of the questions raised above related to the financial responsibility of the resident district apply here, as well.

For this area, an additional issue of equity arises, because in some interdistrict choice plans, parents are required to provide transportation to the boundary of the school district of choice, which is then obligated to transport the student. Some students with handicaps may require highly specialized and costly transportation which parents may not be able to provide, and thus the question arises as to whether these students are being afforded equal access to the same educational opportunities available to non-handicapped students. Moreover, if a parent is required to pay for transportation, is this a violation of the requirement to provide special education at no cost? If the transportation for students with handicaps is paid for by either the sending or the receiving district, does an equity issue arise for students without handicaps? In some State interdistrict choice plans, provisions have been made for funds to support the transportation for students whose parents cannot afford the cost of transporting their child to the district of choice. Should families who have students with handicaps requiring specialized transportation have equal access to such funds?

Among the five States examined here, all of the school choice plans include provisions in the area of transportation, but none of the plans specifically address the transportation of students with disabilities.

The five issues discussed above are complicated by a lack of clarity and interpretation of the applicability of specific Federal requirements related to programs for students with handicaps. Some States have attempted to deal with many of these issues in designing their State interdistrict choice plans while others have not specifically addressed the special circumstances surrounding programs for children with handicaps. The following section summarizes within each of the selected States, how the five issue areas discussed above have been addressed. Text of the school choice legislation for each of the five States is appended.

ARKANSAS

The school choice plan in Arkansas, with first year implementation in school year 1989-90, allows students to apply for admission to a school in any district beyond the one in which the student resides. The plan is completely voluntary; a school district can choose not to admit any nonresident pupils to its schools. Arkansas's school choice statute does not specifically address students with handicaps.

Resident District

The Arkansas school choice plan does not address the area of resident district responsibilities.

Admissions Criteria

Arkansas's school choice plan requires that participating districts adopt specific standards for acceptance and rejection of non-resident students. Allowable standards may include the capacity of a program, class, grade level, or school building. School districts are not required to add teachers or classrooms to accommodate applicant students. Standards may not include a student's previous academic achievement, athletic or other extracurricular ability, handicapping conditions, English proficiency level, or previous disciplinary proceedings. Transfer of students may not adversely affect the desegregation of either the sending or receiving district.

Finance

For determining State aid under the State's minimum foundation program, the nonresident student is counted as a part of the average daily membership of the district to which the student has transferred. Any add-on weights which the student may generate are transferred to the district of attendance.

Due Process

Responsibility for due process is not addressed by the Arkansas school choice plan.

Transportation

The Arkansas school choice statute provides that generally, responsibility for transportation for a nonresident student should be borne by the pupil. However, the resident district may transport the student to the district boundary or to another point agreeable to the parent or to the nonresident district. The resident district can then count that student in their calculation for transportation funding. The nonresident district may provide transportation from the resident district's boundary or from a point

agreeable to the parent or the resident district, and the nonresident district can also count that student in their calculation for transportation funding.

IOWA

Under the Iowa school choice plan to be implemented with the 1990-91 school year, parents may enroll their children in any school district in the State, provided they can describe the reason for wanting to enroll the child in the selected district. Request for a student transfer must be approved by both the resident and non-resident school district. However, a transfer request can be denied by a resident district only if release of a student would adversely affect the district's implementation of a desegregation order or plan or if the transfer would result in a loss of greater than five percent of the district's enrollment (10% for 1991-92).

Enrollment in a non-resident district must be for at least four years unless the pupil will graduate, the pupil's family moves to another school district or the parent or guardian petitions the receiving district for permission to enroll the child in a different district. School districts subject to volunteer or court-ordered desegregation may elect not to participate in the open enrollment plan during the 1990-91 school year, but must develop a policy for implementation of open enrollment for the following school year.

For the 1989-90 school year, emergency rules were adopted to allow implementation of the State open enrollment plan under three special circumstances:

(1) if parents have been paying tuition for the attendance of a student in a non-resident school district, the student may continue to enroll in the non-resident district under the open enrollment plan;

(2) a student whose district of residence changed for purposes of school attendance by August 1, 1989 would be permitted to attend school in the district attended during the 1988-89 school year; and

(3) a student who has been paying tuition to attend an accredited nonpublic school located in a district other than the student's district of residence, which closes either the school or the grade the student would have attended during the 1989-90 school year after June 30, 1988 but before August 1, 1989, would be permitted to request attendance for the 1989-90 school year in a public school located in the district where the nonpublic school was located.

Proposed rules have been developed for the 1990-91 and subsequent school years. Rules and statutory language in effect for the 1989-90 school year are noted below. Any changes or additions made by the proposed rules are provided where appropriate. Both the statute and the proposed rules expressly address special education students. The emergency rules do not.

Proposed rules clarify that the right of a parent or guardian to request open enrollment is to a district other than their district of residence, not to an attendance center within the nonresident district. The receiving district would have authority to determine the particular school which each child shall attend. However, the parent or

guardian may request an attendance center of preference or may condition the open enrollment request on the basis that if a specific attendance center is not granted, the request be denied.

Resident District

The Iowa open enrollment plan defines resident district as "the district of residence for school purposes of the parent or guardian and the district in which an open enrollment student shall be counted for the purpose of generating State aid regardless of the district in which the student is enrolled. "

Proposed rules provide that an open enrollment student and, where applicable, the student's parent or guardian shall be governed by the rules and policies established by the receiving district. However, the rules state that the responsibility for insuring that an appropriate program is maintained for an open enrollment special education student would rest with the resident district.

Admissions Criteria

Under Iowa's school choice plan, both the sending and receiving district must approve a student's transfer request. Student transfers may be denied if they would adversely affect either the sending or receiving district's racial balance, if the receiving district does not have classroom space for the pupil, or if the sending district would lose more than 5% of the district's enrollment for the preceding school year (10% for 1991-92). Proposed rules prohibit the use of any enrollment constraints after the 1991-92 school year.

Every local district is required to adopt a policy which defines the term "insufficient classroom space" for that district. Proposed rules would require that this policy include one or more of the following: nature of the educational program, grade level, available instructional staff, instructional method, physical space, pupil teacher ratio, equipment and materials, facilities either being planned or under construction, facilities planned to be closed, finances available, sharing agreement in force or planned, bargaining agreement in force, or board adopted district educational goals and objectives.

For special education students, transfer requests can be approved only if the receiving district maintains a special education instructional program which is appropriate to meet the child's educational needs and the enrollment of the child in the receiving district's program would not cause the size of the class in that program to exceed the maximum class size as prescribed in State rules. Proposed rules would provide that in a situation where the appropriateness of the program is in question, the student should remain in the program of the resident district until a final determination is made. This determination would be the responsibility of the director of special education, following recommendation by a diagnostic-education team of the area education agency to which the receiving district is assigned.

Finance

The district of residence is required to pay to the receiving district the lower district cost per pupil of the two districts, plus any funds received for the pupil as a result of non-English speaking weighting. The district of residence is also required to transfer to the receiving district funds allocated for the full-time equivalent attendance of the pupil. Special provisions apply for districts with specific outstanding debts. For special education students, the resident district is required to pay the actual costs incurred by the transfer district in providing the appropriate special education program.

Due Process

Proposed rules would require that any complaint or appeal by the parent or guardian concerning the educational system, its process, or administration in the receiving district be initially directed to the board of directors of the receiving district. The decision of the board of directors may be appealed to the State board of education.

A provision is also included in the proposed rules that the resident district is responsible for insuring that an appropriate program is maintained for an open enrollment special education student.

Transportation

The parent or guardian is responsible for transporting the transfer student to and from a point on a regular school bus route of the receiving district; no reimbursement is provided. However, if a child meets the economic eligibility requirements under the National School Lunch and Child Nutrition Acts for free or reduced price lunches, the sending district is responsible for providing transportation or paying the pro rata cost of the transportation to a parent or guardian for transporting the child to and from a point on a regular school bus route of a contiguous receiving district, in an amount not to exceed the average transportation cost per pupil of the sending district. A sending district which pays for transporting students to a contiguous district may withhold that amount from the district cost per pupil paid to the receiving district.

Proposed rules would clarify that the resident district is not required to provide any transportation assistance for a student involved in open enrollment with a district that is not contiguous with the student's resident district.

MINNESOTA

Minnesota's interdistrict school choice plan, referred to as the enrollment options program, was implemented during the 1988-89 school year. The plan is voluntary. That is, school districts can elect not to participate in the enrollment options program by passing a resolution to that effect. For the 1988-89 and 1989-90 school years school districts with over 1,000 students were mandated to participate. By 1990-91, all school districts must participate in the open enrollment program unless they elect not to through school board resolution. Prior to the current enrollment options program, Minnesota had a completely voluntary program implemented in 1987 in which most school districts participated.

Minnesota's plan allows students to attend a school or program in a district in which the pupil does not reside. Recent amendments to the plan require that a student requesting transfer to another district and the student's parent or guardian explore with a school guidance counselor or other appropriate staff member of the resident district, the pupil's academic or other reason for applying to enroll in a nonresident district. A student's request for transfer to another district must identify the reason for wanting to enroll in the nonresident district and may include a request for a particular school or program. Once enrolled in a nonresident district, the student may continue to be enrolled without submission of annual or periodic applications. The Minnesota school choice legislation does not specifically address special education students so that decisions regarding open enrollment are not affected by a child's handicapping condition.

Resident District

The area of resident district is not addressed in Minnesota's open enrollment statute. However, State Board of Education rules state that the providing district is responsible for assuring the provision of an appropriate program for a student placed through education choice options, including the notice and hearing provisions.

Admissions Criteria

Each school board is required to adopt specific standards for acceptance and rejection of applications. Such standards may include the capacity of a program, class, grade level, or school building, but may not include previous academic achievement, athletic or other extracurricular ability, handicapping conditions, proficiency in the English language, or previous disciplinary proceedings.

Finance

Receiving districts collect foundation aid for each nonresident student in attendance. Consequently, foundation aid paid to a resident district is reduced for each student enrolled in a nonresident district. While the open enrollment statute does not address financing for programs for children with handicaps, other statutory language and State Board of Education rules require that a resident district pay the excess cost of a

special education program provided to a student with handicaps enrolled in a non-resident district through the open enrollment program.

Due Process

Minnesota's open enrollment statute does not address this area. However, State Board of Education rules state that the providing district is responsible for assuring that an appropriate program is available for a student placed in a non-resident district through education choice options, including the notice and hearing provisions.

Transportation

If requested by a parent, the nonresident district can provide transportation within the district and the State would provide the district with transportation aid. The resident district is not required to provide or pay for transportation between the pupil's residence and the border of the nonresident district. A family whose income is at or below the Federally established poverty level may be reimbursed by the nonresident district for the costs of transportation from the pupil's residence to the border of the nonresident district.

NEBRASKA

Nebraska's interdistrict choice plan, passed in the 1989 legislative session, provides students with the option of attending school in a district other than the one in which the student resides. Applications to attend a nonresident district must "describe in detail the substantial educational opportunity available to the option student in the option school district that is unavailable in the resident school district." A particular school may be requested, but assignment of a non-resident student is determined by the option district. The option to attend a nonresident school district is available only once to each student prior to graduation unless the student relocates to a different resident school district. Students are required to attend the option school district until graduation or relocation in a different resident school district, unless the student opts to return to the resident school district.

The school choice program in Nebraska is being phased in, beginning with voluntary participation during the 1990-91 school year. For the 1990-91 school year, both the resident and non-resident school district must agree to participate in the enrollment option program. For 1991-92 and 1992-93 school years, participation is voluntary for the non-resident district, but the resident district will be required to participate until more than 5% (10% for 92-93) of the students choose to attend option school districts. At that point the resident district may choose to limit participation of its remaining student population. By 1993-94, all public school districts in Nebraska will be required to participate in the enrollment option program.

Regulations and standards which mirror Nebraska's school choice statute have been drafted. Both the regulations and standards and the school choice statute address special education in several areas, as noted below.

Resident District

The Nebraska enrollment option statute defines resident school district as "the school district in which a student resides." However, the statute states explicitly that for all purposes except transportation, but including special education, students opting to attend a nonresident district should be treated as resident students of the receiving school district.

Admissions Criteria

Each school district is required to adopt standards for acceptance and rejection of nonresident students. Standards may include the capacity of a program, class, grade level, or school building, or the availability of appropriate special education programs. The receiving district can decide that a program, a class, or a school is unavailable to option students due to lack of capacity. Standards may not include previous academic achievement, athletic or other extracurricular ability, handicapping conditions, proficiency in the English language, or previous disciplinary proceedings. School districts with a desegregation plan must adopt standards that facilitate the school district's desegregation plan and maintain or improve the integration of the school district.

Finance

For purposes of calculating school foundation and equalization aid, transfer students are counted by the resident district, not the receiving district. However, the sending school district must remit to the receiving district, an amount equal to the State aid provided for each transfer student. The State Department of Education will reimburse each option school district for any excess costs of special education programs provided to option students.

Due Process

Nebraska statute states explicitly that option students must be treated as resident students. Thus, if allowed by Federal requirements the receiving district would be responsible for all due process provisions.

Transportation

Transportation is the responsibility of the parent or guardian of the transfer student, although a school district may provide transportation to the option student upon mutual agreement with the parent or legal guardian.

OHIO

The interdistrict choice program in Ohio, passed during the 1989 legislative session, enables students to attend a school district which is adjacent to their school district of residence. The program is voluntary with a requirement that by school year 1993-94 all school districts adopt a policy either prohibiting or allowing enrollment of students from all adjacent districts. The Ohio choice plan differs from the other four State interdistrict choice plans described here because it allows choice only among adjacent school districts and not among all school districts within a State. Special education students are addressed by Ohio's choice statute, as described below.

Resident District

The area of resident district responsibilities is not addressed in the Ohio choice legislation.

Admissions Criteria

Under Ohio's choice plan, each school district must adopt policies for admitting applicants from adjacent schools which may include limits by grade level, school building and education program. Admissions criteria must also ensure that an appropriate racial balance is maintained in the district schools. Standards may not include any requirement of academic ability, or any level of athletic, artistic, or other extracurricular skills, handicapping condition, English language proficiency, or previous disciplinary actions. However, a district may refuse to admit an adjacent district student with handicaps if the services described in the student's Individual Education Plan (IEP) are not available in the district's schools. Also, students with prior disciplinary actions may be denied admission in an adjacent district if the applicant student has been suspended or expelled by the adjacent district for ten consecutive days or more in the term for which admission is sought, or in the term immediately preceding the term for which admission is sought.

Finance

Ohio's choice program provides that students can attend an adjacent district free of any tuition obligation to the sending district's schools. In the distribution of State education aid, payments are made to school districts for each non-resident student enrolled, including the excess costs for any student receiving special education and related services.

Due Process

Responsibility for due process is not addressed in Ohio's choice statute.

Transportation

Upon parent request, and if a district provides transportation to resident students of the same grade level and distance from school, receiving districts can provide transportation for a nonresident student within the boundaries of the receiving district. However, the receiving district is responsible for the pick up and drop off of a nonhandicapped student only at a regular school bus stop within the receiving district. Specific requirements for transportation of students with handicaps is not addressed in the statute.

State board funds are available to reimburse low income families for the reasonable cost of transportation from the student's home to the designated school bus stop.

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REFERENCES

Education Commission of the States. A State Policy Maker's Guide to Public-School Choice. Denver, CO: ECS, February, 1989.

Nathan, Joe, "Progress, Problems, and Prospects of State Educational Choice Plans", U.S. Department of Education, Office of Planning, Budget and Evaluation, July, 1989.

APPENDIX

STATE SCHOOL CHOICE LEGISLATION

ARKANSAS

ACT 609 1989

State of Arkansas *AS ENGROSSED 2/17/89*
77th General Assembly
Regular Session, 1989

A Bill

HOUSE BILL 1173

By: Representatives Northcutt, Day, Hutchinson, Matthews, Mahony, McKissack, and Keet

For An Act To Be Entitled

"AN ACT TO ENABLE ANY PUPIL TO ATTEND A PUBLIC SCHOOL IN ARKANSAS IN A DISTRICT OTHER THAN THAT ONE IN WHICH THE PUPIL RESIDES, SUBJECT TO THE RESTRICTIONS AND CONDITIONS CONTAINED HEREIN; AND FOR OTHER PURPOSES."

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. TITLE. This Act may be referred to and cited as the "ARKANSAS PUBLIC SCHOOL CHOICE ACT OF 1989."

SECTION 2. LEGISLATIVE FINDINGS AND DECLARATION OF PUBLIC NECESSITY. The General Assembly hereby finds that the students in Arkansas' public schools and their parents will become more informed about and involved in the public educational system if students and their parents or guardians are provided greater freedom to determine the most effective school for meeting their individual educational needs. There is no "right" school for every student and permitting students to choose from among different schools with differing assets will increase the likelihood that some marginal students stay in school and that other, more motivated students find their full academic potential.

The General Assembly further finds that giving more options to parents and students with respect to where they attend public school will increase the responsiveness and effectiveness of the State's schools since teachers, administrators, and school board members will have added incentive to satisfy the educational needs of the students who reside in the district.

The General Assembly therefore finds that these benefits of enhanced quality and effectiveness in our public schools justify permitting a student to apply for admission to a school in any district beyond the one in which he resides, provided that the transfer by this student would not adversely affect

the desegregation of either district.

SECTION 3. PUPIL CHOICE. A public school choice program is hereby established to enable any pupil to attend a school in a district in which the pupil does not reside, subject to the restrictions contained in this Act.

SECTION 4. APPLICATION PROCEDURE. Before a pupil may attend a school in a nonresident district, the pupil's parent or guardian must submit an application to the nonresident district. This application must be postmarked not later than February 1, of the year in which the pupil would begin the fall semester at the nonresident district.

SECTION 5. NON-PARTICIPATING DISTRICTS. A school board may, by resolution, determine that it will not admit any nonresident pupils to its schools pursuant to this Act.

SECTION 6. BASIS FOR ADMISSION DECISIONS. The school board of any participating district must adopt, by resolution, specific standards for acceptance and rejection of applications. Standards may include the capacity of a program, class, grade level, or school building. Nothing in this Act requires a school district to add teachers or classrooms or in any way exceed the requirements and standards established by existing law. Standards may not include an applicant's previous academic achievement, athletic or other extracurricular ability, handicapping conditions, English proficiency level, or previous disciplinary proceedings.

SECTION 7. NOTICE TO APPLICANTS. Within sixty (60) days of the receipt of an application from a nonresident pupil seeking admission under the terms of this Act, a participating district shall notify the parent or guardian and the resident district in writing as to whether the pupil's application has been accepted or rejected. If an application is rejected, the nonresident district must state in the notification letter the reason(s) for rejection.

SECTION 8. Transportation. The responsibility for transportation for a nonresident pupil shall be borne generally by the pupil. The resident district may transport the student to the district boundary or to a point

agreeable to the parent or the nonresident district within either the resident or nonresident district and count that student in the resident district's calculation for transportation funding. The nonresident district may provide transportation from the resident district's boundary or from a point agreeable with the parent or the resident district within either the resident or nonresident district to a school in the nonresident district and count that student in the nonresident district's calculation for transportation funding.

SECTION 9. CREDITS. A nonresident district shall accept credits toward graduation that were awarded by another district. The nonresident district shall award a diploma to a nonresident pupil if the pupil meets the nonresident district's graduation requirements.

SECTION 10. Minimum Foundation Aid. For purposes of determining a school district's Minimum Foundation Program Aid, the nonresident student shall be counted as a part of the Average Daily Membership of the district to which the student has transferred. All add-on weights generated by the student shall also be transferred to the district of attendence.

SECTION 11. LIMITATIONS. The provisions of this Act and all pupil choice options created hereby are subject to the following limitations:

(a) No student may transfer to a nonresident district where the percentage of enrollment for the student's race exceeds that percentage in his resident district.

(b) In any instance where the foregoing provisions would result in a conflict with a desegregation court order, the terms of the order shall govern.

SECTION 12. ATHLETIC ELIGIBILITY. A student who transfers to a nonresident district shall not be eligible for interscholastic athletic competition for a period of one year from the date of the beginning of the transfer.

SECTION 13. DISPUTE RESOLUTION. The Board of Education shall be authorized to resolve disputes arising under Sections 8, 9, 10, 11, and 12 of

this Act.

SECTION 14. All provisions of this Act of a general and permanent nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code Revision Commission shall incorporate the same in the Code.

/s/W. Northcutt et al

APPROVED BY [signature]
GOVERNOR
3-16-89

IOWA

AN ACT

TO PROVIDE A PROCEDURE FOR PARENTS OR GUARDIANS TO ENROLL THEIR CHILDREN IN THE PUBLIC SCHOOLS OF SCHOOL DISTRICTS OTHER THAN THE DISTRICT OF RESIDENCE WITHOUT COST TO THE PARENTS OR GUARDIANS AND TO PROVIDE AN EFFECTIVE DATE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. Section 282.18, Code 1989, is amended by striking the section and inserting in lieu thereof the following:

282.18 OPEN ENROLLMENT.

For the school year commencing July 1, 1989, and each succeeding school year, a parent or guardian residing in a school district may enroll the parent's or guardian's child in a public school in another school district in the manner provided in this section.

By September 15 of the preceding school year the parent or guardian shall informally notify the district of residence, and not later than November 1 of the preceding school year, the parent or guardian shall send notification to the district of residence and to the department of education on forms prescribed by the department of education that the parent or guardian intends to enroll the parent's or guardian's child in a public school in another school district. The parent or guardian shall describe the reason that exists for enrollment in the receiving district that is not present in the district of residence. The board of the district of residence shall transmit a copy of the form to the receiving school district within five days after its receipt. During the 1990-1991 school year, if the board of the district of residence determines that transmission of the request will result in a loss of greater than five percent of the district's certified enrollment for the previous year, the board of the district of residence may deny the request for the 1990-1991 school year. During the 1991-1992 school year, if the board of the district of residence determines that transmission of the request will result in a loss of greater than ten percent of the district's certified enrollment for the previous year, the board of the district of residence may deny the request for the 1991-1992 school year. If, however, a failure to transmit a request will result in enrollment of students from the same nuclear family in different school districts, the request shall be transmitted to the receiving district for enrollment. The board of each school district shall adopt a policy relating to the order in which

requests for enrollment in other districts shall be considered. The board of the receiving school district shall enroll the pupil in a school in the receiving district for the following school year unless the receiving district does not have classroom space for the pupil. In all districts involved with volunteer or court-ordered desegregation, minority and nonminority student ratios shall be maintained according to the desegregation plan or order. The superintendent of a district subject to volunteer or court-ordered desegregation may deny a request for transfer under this section if the superintendent finds that enrollment or release of a pupil will adversely affect the district's implementation of the desegregation order or plan. If, however, a transfer request would facilitate a voluntary or court-ordered desegregation plan, the district shall give priority to granting the request over other requests. A parent or guardian, whose request has been denied because of a desegregation order or plan, may appeal the decision of the superintendent to the board of the district in which the request was denied. The board may either uphold or overturn the superintendent's decision. A decision of the board to uphold the denial of the request is subject to appeal under section 290.1.

Each district shall provide notification to the parent or guardian relating to the transmission or denial of the request. A district of residence shall provide for notification of transmission or denial to a parent or guardian within three days of board action on the request. A receiving district shall provide notification to a parent or guardian, within fifteen days of receipt of the request, of whether the child will be enrolled in that district or whether the request is to be denied.

A request under this section is for a period of not less than four years unless the pupil will graduate, the pupil's family moves to another school district, or the parent or guardian petitions the receiving district for permission to enroll the child in a different district, which may include the district of residence, within the four-year period. If the parent or guardian requests permission of the receiving district to enroll the child in a different district within the four-year period, the receiving district school board may transmit a copy of the request to the other school district within five days of the receipt of the request. The new receiving district shall enroll the pupil in a school in the district unless there is insufficient classroom space in the district or unless enrollment of the pupil would adversely affect court-ordered or voluntary desegregation orders affecting a district. A denial of a request to change district enrollment within the four-year period shall be subject to appeal under section 290.1.

The board of directors of the district of residence shall pay to the receiving district the lower district cost per pupil of the two districts, plus any moneys received for the pupil as a result of non-English speaking weighting under section 442.4, subsection 6, for each school year. The district of residence shall also transmit the phase III moneys allocated to the district for the full-time equivalent attendance of the pupil, who is the subject of the request, to the receiving district specified in the request for transfer. If a request filed under this section is for a

child requiring special education under chapter 281, the request to transfer to the other district shall only be granted if the receiving district maintains a special education instructional program which is appropriate to meet the child's educational needs and the enrollment of the child in the receiving district's program would not cause the size of the class in that special education instructional program in the receiving district to exceed the maximum class size in rules adopted by the state board of education for that program. For pupils requiring special education, the board of directors of the district of residence shall pay to the receiving district the actual costs incurred in providing the appropriate special education. Quarterly payments shall be made to the receiving district. If the transfer of a pupil from one district to another results in a transfer from one area education agency to another, the sending district shall forward a copy of the request to the sending district's area education agency. The receiving district shall forward a copy of the request to the receiving district's area education agency. Any moneys received by the area education agency of the sending district for the child who is the subject of the request shall be forwarded to the receiving district's area education agency. Notwithstanding section 285.1 relating to transportation of nonresident pupils, the parent or guardian is responsible for transporting the pupil without reimbursement to and from a point on a regular school bus route of the receiving district. A receiving district shall not send school vehicles into the district of residence of the pupil using the open enrollment option under this section, for the purpose of transporting the pupil to and from school in the receiving district. If the child meets the economic eligibility requirements, established under the federal National School Lunch and Child Nutrition Act, 42 U.S.C. Section 1751-1785, for free or reduced price lunches, the sending district shall be responsible for providing transportation or paying the pro rata cost of the transportation to a parent or guardian for transporting the child to and from a point on a regular school bus route of a contiguous receiving district unless the cost of providing transportation to a parent or guardian exceeds the average transportation cost per pupil transported for the previous school year in the district. If the cost exceeds the average transportation cost per pupil transported for the previous school year, the sending district shall only be responsible for that average per pupil amount. A sending district which provides transportation for a child to a contiguous receiving district under this paragraph may withhold from the district cost per pupil amount, that is to be paid to the receiving district, an amount which represents the average or pro rata cost per pupil for transportation, whichever is less.

A child, whose parent or guardian has submitted a request to enroll the child in a public school in another district, shall, if the request has resulted in the enrollment of the child in the other district, attend school in the other district which is the subject of the request. This requirement shall not apply, however, if the child's family moves out of the district of residence.

Every school district shall adopt a policy which defines the term "insufficient classroom space" for that district.

The board of directors of a school district subject to volunteer or court-ordered desegregation may vote not to participate in open enrollment under this section during the school year commencing July 1, 1990, and ending June 30, 1991. If a district chooses not to participate in open enrollment under this paragraph, the district shall develop a policy for implementation of open enrollment in the district for that following school year. The policy shall contain objective criteria for determining when a request would adversely impact the desegregation order or plan and criteria for prioritizing requests that do not have an adverse impact on the order or plan.

A student who attends a grade in grades nine through twelve in a school district other than the district of residence is not eligible to participate in interscholastic athletic contests and athletic competitions during the first year of enrollment under this section except for an interscholastic sport in which the district of residence and the other school district jointly participate or unless the sport in which the student wishes to participate is not offered in the district of residence. However, a pupil who has paid tuition and attended school, or has attended school pursuant to a mutual agreement between the two districts, in a district other than the pupil's district of residence for at least one school year prior to the effective date of this Act, shall be eligible to participate in interscholastic athletic contests and athletic competitions under this section, but only as a member of a team from the district that student had attended.

A student who has been paying tuition and attending school on or before March 25, 1989, in a district other than the student's district of residence shall be permitted to attend school in the district where the student has been paying tuition, during the 1989-1990 school year, by filing a request to use the open enrollment option under this section by August 1, 1989.

If a student has been paying tuition and attending an accredited nonpublic school during the 1988-1989 school year, which is located in a public school district other than the student's public school district of residence, and the nonpublic school discontinues the grade or school which the student would have attended during the 1989-1990 school year, after June 30, 1988, but before August 1, 1989, the student shall be permitted to attend a public school, located within the public school district where the nonpublic school was located, during the 1989-1990 school year if the receiving public school district agrees to accept the student and the student's parent or guardian files a request to use the open enrollment option under this section by August 1, 1989. The public school district where the nonpublic school was located shall count the student in the September 1989 enrollment count.

A student, whose district of residence, for the purposes of school attendance, changes by August 1, 1989 shall be permitted to attend school during the 1989-1990 school year in the district in which the student attended during the 1988-1989 school year if a request to use the open enrollment option under this section is filed by August 1, 1989.

If a child, for which a request to transfer has been filed with a district has been suspended or expelled in the district, the receiving district named in the request may refuse the request to transfer until the child has been reinstated in the sending district.

A laboratory school under chapter 265 shall be exempt from the provisions of this section.

The director of the department of education shall recommend rules to the state board of education for the orderly implementation of this section. The state board shall adopt rules as needed for the implementation of this section.

Sec. 2. THREE-YEAR REPORT ON OPEN ENROLLMENT. The department of education shall conduct a three-year study of the implementation of open enrollment in the state. The study shall include, but not be limited to, a comparison of graduation rates before and after the effective date of this Act; a demographic study of the use of the open enrollment option relating to the number of students using the open enrollment option, the effect of open enrollment on staffing patterns and curricular offerings, the effect of open enrollment on district ability to comply with desegregation orders or plans and minimum school standards, and the effect of open enrollment on the actual student populations within affected districts; the effect of open enrollment on student participation in interscholastic athletics; and the average number of school days missed by open enrollment participants. The data collected, together with any conclusions, shall be submitted in annual reports to the general assembly until and including the general assembly which meets in 1993.

Sec. 3. Section 280.16, Code 1989, is repealed effective July 1, 1990.

Sec. 4. Section 290.1, Code 1989, is amended to read as follows:

290.1 APPEAL TO STATE BOARD.

A person aggrieved by a decision or order of the board of directors of a school corporation in a matter of law or fact, or a decision or order of a board of directors under section 282.18 may, within thirty days after the rendition of the decision or the making of the order, appeal the decision or order to the state board of education; the basis of the proceedings shall be an affidavit filed with the state board by the party aggrieved within the time for taking the appeal, which affidavit shall set forth any error complained of in a plain and concise manner.

For purposes of section 282.11, a "person aggrieved" or "party aggrieved" means the "parent or guardian of an affected pupil".

Sec. 5. This Act, being deemed of immediate importance, takes effect upon enactment.

[EDUCATION DEPARTMENT (281)]

Adopted and Filed Emergency Implemented

Pursuant to the authority of Iowa Code section 256.7(5) and Senate File 59 and House File 774, Section 81 enacted by the 1989 session of the Seventy-third General Assembly, the Department of Education hereby adopts the following rules that will be a portion of a total new Chapter 17, "Open Enrollment," Iowa Administrative Code.

These rules will implement those portions of Senate File 59 as amended by House File 774, Section 81, Seventy-third General Assembly, making open enrollment options available to parents or guardians for students to enroll in a school of a public school district other than their school district of residence under three distinct options available for the 1989-1990 school year.

The Department of Education finds that notice and public participation are impracticable because there is not adequate time to implement the regular rule making process and carry out the requirements of Senate File 59 as amended by House File 774, section 81, Seventy-third General Assembly requiring parents or guardians to make application for these open enrollment options on or before August 1, 1989. As provided by Iowa Code subsection 17A.5(2)"b"(2), the Department of Education finds that these rules confer a benefit to the public by making three specific open enrollment options available for the 1989-1990 school year and that the normal effective date for rules of 35 days after publication should be waived and the rules made effective upon filing with the Administrative Rules Coordinator.

The State Board of Education adopted these rules on June 30, 1989, for filing by the Department to become effective July 7, 1989.

CHAPTER 17

OPEN ENROLLMENT

281--17.1(256) Purpose. It is the purpose of this chapter to give guidance and direction to parents or guardians and public school districts in making arrangements for students to enroll in a public school of a school district other than the students district of residence without cost to the parents or guardians.

281--17.2(256) Definitions. For the purpose of this chapter whenever the following terms are used, they shall refer to the following definitions:

Alternative receiving district" is a district to which a parent or guardian petitions for the open enrollment transfer of their student from a receiving district. An alternative receiving district could be the parents or guardians district of residence.

"Economic eligibility requirements" are the requirements established under the federal National School Lunch and Child Nutrition Act, 42 U.S.C. Section 1751-1785 making children of certain parents or guardians eligible to receive free or reduced price school lunches.

"Informal notification" is a letter sent by a parent or guardian to their district of residence indicating an intent to utilize the open enrollment provision of Iowa Code section 282.18.

"Nuclear family" is a family group that consists of the mother and father and their children in a two parent family or all children in a family group for which a single parent or guardian(s) have custody and responsibility.

"Open enrollment" is the procedure allowing a parent or guardian to enroll one or more of their children in a public school district other than their district of residence at no tuition cost to the parent.

"Receiving district" is the public school district to which a parent or guardian makes application for enrollment or the district accepting the application for enrollment of a student under the provisions of Iowa Code section 282.18.

"Resident district" is the district of residence for school purposes of the parent or guardian and the district in which an open enrollment student shall be counted for the purpose of generating state aid regardless of the district in which the student is enrolled.

"Sending district" is synonymous with the term resident district.

"Volunteer or court-ordered desegregation" is a district that is either under direct court order or is in voluntary compliance with State Board of Education guidelines to maintain certain minority-nonminority student ratios in the district according to a desegregation plan or order.

281--17.3(256) Open enrollment options available for the 1989-1990 school year.

17.3(1) Parents or guardians who have been paying tuition.

(a) Application process.

A parent or guardian who paid tuition prior to March 25, 1989, for the attendance of a student in a public school district other than their district of residence may continue this attendance starting with the 1989-1990 school year under the provisions of open enrollment. The parent or guardian shall file a letter with their district of residence indicating this intent with a copy of this letter to the district to which they have been paying tuition. No specific forms are required for filing this request intent. This letter shall be filed on or before August 1, 1989.

(b) District and parent or guardian responsibilities.

Once the letter of request has been filed, the parent or guardian is committed to the continued enrollment of their student in the receiving district for a minimum of four years.

The letter of intent may request the open enrollment option for more than the minimum four years. The parent or guardian shall be required to maintain this enrollment for four or more years unless the student graduates, the parent or guardian moves out of their district of residence, or the parent or guardian petitions, and is accepted for open enrollment in another school district. Neither the resident nor the receiving district shall be able to deny an open enrollment request filed under the provisions of this section. Starting with the 1989-1990 school year and continuing for the length of the enrollment commitment, the district of residence shall pay to the receiving district on a quarterly basis the proportionate amount of the lower district cost per pupil of the two districts plus any moneys received for the student as a result of non-English speaking weighting under Iowa Code subsection 442.4(6).

17.3(2) Change of district of residence for school attendance.

(a) Application process.

A student whose district of residence changes for purposes of school attendance by August 1, 1989, shall be permitted to attend school, under open enrollment provisions, in the district in which the student attended school during the 1988-1989 school year. To exercise this option the parent or guardian shall file on or before August 1, 1989, a letter with their current district of residence, with a copy to the district the student attended during the 1988-1989 school year, indicating their request to exercise this open enrollment option. No specific forms are required for filing this request.

(b) District and parent or guardian responsibilities.

Once the letter of request has been filed, the parent or guardian is committed to the continued enrollment of their student in the receiving district for a minimum of four years. The letter may request the open enrollment option for more than the minimum four years. The parent or guardian shall be required to maintain this enrollment for four or more years

unless the student graduates, the parent or guardian moves out of their district of residence, or the parent or guardian petitions, and is accepted, for open enrollment in another school district. Neither the resident nor the receiving district shall be able to deny an open enrollment request filed under the provisions of this section. Starting with the 1989-1990 school year and continuing for the length of the enrollment commitment, the district of residence shall pay the receiving district on a quarterly basis the proportionate amount of the lower district cost per pupil of the two districts plus any moneys received for the student as a result of non-English speaking weighting under Iowa Code subsection 442.4(6).

17.3(3) Closing of nonpublic school or grade.

(a) Application process.

A student who has been paying tuition to attend an accredited nonpublic school located in a district other than the student's district of residence, which closes either the school or the grade after June 30, 1988, but before August 1, 1989, that the student would have attended during the 1989-1990 school year shall be permitted to request attendance for the 1989-1990 school year in a public school located in the district where the nonpublic school was located. The parent or guardian is required to file a letter requesting this open enrollment option with the concerned public school district on or before August 1, 1989.

(b) District and parent or guardian responsibilities.

The public school district shall have the option to accept or reject this request. If accepted, the public school district shall count the student in its September 1989 enrollment count. This open enrollment option is available only for the 1989-1990 school year. If the parent or guardian wishes to continue this enrollment beyond the 1989-1990 school year, they shall make application, as provided in other sections of this Chapter, for open enrollment options applicable for the 1990-1991 school year.

17.3(4) Applicability of restrictions. The open enrollment options available in subrules 17.3(1), (2) and (3) are not restricted by other provisions in this Chapter on enrollment loss caps, insufficient classroom space, desegregation plans or orders, or policy on the order in which requests for enrollment in other districts will be considered that are applicable to open enrollment provisions that are initiated to start with the 1990-1991 school year.

These rules are intended to implement provision of Senate File 59 as amended by House File 774, Section 81, applicable to open enrollment provisions for the 1989-1990 school year.

July 7, 1989

DATE

William L. Lepley

William L. Lepley

[EDUCATION DEPARTMENT (281)]

Notice of Intended Action

Pursuant to the authority of Iowa Code section 256.7(5) and Senate File 59 and House File 774, Section 81 enacted by the 1989 session of the Seventy-third General Assembly, the Department of Education hereby gives Notice of Intended Action to amend Chapter 17, "Open Enrollment" Iowa Administrative Code, Adopted and Filed Emergency Implemented and filed Notice of Intended Action on July 7, 1989.

The rules Adopted and Filed Emergency Implemented on July 7, 1989, created Chapter 17, "Open Enrollment" to facilitate those portions of Senate File 59, as amended by House File 774, Section 81, Seventy-third General Assembly, making open enrollment options available to parents or guardians for students to enroll in a school of a public school district other than their school district of residence under three distinct options available for initiation in the 1989-1990 school year. These rules add to Chapter 17 the provisions required to implement open enrollment options for the 1990-1991 and subsequent school years. These amendments relate to application processes and restrictions, parent-guardians and school district responsibilities, transportation, appeals, payment procedures, and open enrollment relating to special education students.

Persons wishing to make written comments or suggestions on these proposed rules may address this material to David R. Bechtel, Special Assistant, Iowa Department of Education, Grimes State Office Building, Des Moines, Iowa 50319 prior to August 31, 1989. Oral comments may be presented at a public hearing to be held at 9 a.m. on August 31, 1989, in the auditorium located on the main floor, Wallace State Office Building, 900 East Grand Avenue, Des Moines, Iowa. At the hearing anyone wishing to make comment will be asked to give their name and address for the record, and to confine their oral comments to the rule. Depending on the number of individuals wishing to comment, the Department of Education staff member conducting the hearing may be required to place time limits on the presentations.

These rules are intended to implement Senate File 59, as amended by House File 774, Section 81, as passed by the 1989 session of the Seventy-third General Assembly.

The following rules are proposed:

Amend 281-17 by adding the following new rules:

281-17.4(256) Application process for the 1990-1991 and subsequent school years. The following procedures shall be used by parents or guardians and school districts in processing open enrollment applications.

17.4(1) Parents or guardians responsibilities. By September 15 of the school year preceding the school year for which open enrollment is requested, a parent or guardian shall informally notify (see 17.2) their district of residence of their intent to initiate an open enrollment request. By November 1 of that same school year, the parent or guardian shall send formal notice to their district of residence and to the Department of Education of their intent to enroll one or more students in a public school district other than their district of residence. The formal notification shall contain a statement by the parent or

guardian describing the reason that exists for enrollment in the receiving district that is not present in the district of residence and shall be made on forms prescribed by the Department of Education. These forms are to be available from each public school district and area education agency of the state and from the state department of education.

17.4(2) School district responsibilities. The board of the district of residence shall transmit, within five days after its receipt, a copy of the formal notification form to the receiving district named in the form. A resident district board may act on open enrollment requests anytime following November 1 of the year preceding the year for which the requests are made provided that this action shall occur no later than December 1 of that year. Each district shall provide notification to the parent or guardian relating to the transmission or denial of the open enrollment request. A district of residence shall provide to the parent or guardian notification of either the transmittal or denial of the request within three days of board action. A receiving district shall provide notification within fifteen days of receipt of the request whether the student will be enrolled or the request for enrollment is denied.

281-17.5(256) Restrictions to open enrollment requests. A district board may exercise the following restrictions related to open enrollment requests:

17.5(1) Enrollment loss caps. For open enrollment requests for the 1990-1991 school year, if the board of the district of residence determines that transmission of the request will result in a loss of greater than five percent of the district's certified enrollment for the 1989-1990 school year, the request may be denied. For open enrollment requests for the 1991-1992 school year, if the board of the district of residence

determines that transmission of the request will result in a loss of greater than ten percent of the district's certified enrollment for the 1990-1991 school year, the request may be denied. In calculating enrollment loss, only the loss due to open enrollment from the certified enrollment count shall be used, not loss that may result from other factors resulting in declining enrollment for the district. In considering enrollment loss percentages, if denial of a request would result in enrollment of students from the same nuclear family in different school districts, the resident district shall transmit the request to the receiving district. This provision relates only to enrollment loss percentage transfers and not to decisions made by a receiving district under its policy on insufficient classroom space. Following the 1991-1992 school year the board of a resident district shall not use any enrollment loss constraints in considering open enrollment requests. The board of each district shall adopt a policy relating to the order in which open enrollment requests shall be considered. This policy shall only apply to requests for the 1990-1991 and the 1991-1992 school years for districts wishing to restrict open enrollment transfers as provided by this subsection.

17.5(2) Volunteer or court-ordered desegregation. In districts involved with voluntary or court-ordered desegregation (See 17.2) where there is a requirement to maintain minority and nonminority student ratios according to a desegregation plan or order, the superintendent of the district may deny a request for open enrollment transfer if it is found that the enrollment or release of a student will adversely affect the district's desegregation plan or order. Transfer requests that would facilitate the desegregation plan or order shall be given

priority to other transfer requests received by the district. A parent or guardian whose request for open enrollment transfer is denied by the superintendent of the district may appeal that decision to the district board.

A district subject to volunteer or court-ordered desegregation may, by board action, vote not to participate in open enrollment for the 1990-1991 school year. This action would restrict both transfers to and out of the district for that school year. Such action shall not affect open enrollment options available to parents or guardians as provided in section 17.3. Districts voting not to participate in open enrollment for the 1990-1991 school year shall develop a policy for implementation of open enrollment for the 1991-1992 school year which shall include: objective criteria for determining when a transfer request would adversely impact on the district's desegregation order or plan and criteria for prioritizing requests that do not have an adverse impact on the order or plan.

17.5(3) Policy on insufficient classroom space. No receiving district shall be required to accept an open enrollment transfer request if it has insufficient classroom space to accommodate the student(s). Each district board shall adopt a policy which defines the term "insufficient classroom space" for that district. This policy shall establish a basis for the district to make determinations on the acceptance or denial, as a receiving district, of an open enrollment transfer request. This policy may include but shall not be limited to one or more of the following: nature of the educational program, grade level, available instructional staff, instructional method, physical space, pupil teacher ratio, equipment and materials, facilities either being planned or under

construction, facilities planned to be closed, finances available, sharing agreement in force or planned, bargaining agreement in force, or board adopted district educational goals and objectives. This policy shall be reviewed by the district board annually.

17.5(4) Designation of attendance center. The right of a parent or guardian to request open enrollment is to a district other than their district of residence, not to an attendance center within the nonresident district. In accepting an open enrollment student, the receiving district board has the same authority it has in regard to its resident students as provided by Iowa Code section 279.11, to "determine the particular school which each child shall attend." In the application process, however, the parent or guardian may request an attendance center of preference or may condition the open enrollment request on the basis that if a specific attendance center is not granted, the request be denied.

281-17.6(256) Requirements applicable to parents or guardians and students.

17.6(1) Eligibility for transfer. A receiving district may refuse a request for transfer filed by a parent or guardian if the student has been either suspended or expelled until the student is reinstated in the education program of the resident district. If once a request for transfer has been accepted by a receiving district and the student is subsequently suspended or expelled in the district of residence, the receiving district may refuse to honor the request for transfer until the student has been reinstated in the education program of the resident district.

17.6(2) Restrictions on interscholastic athletic contests and competitions. A student who transfers school districts in any of the grades nine through twelve shall not be eligible to participate in interscholastic contests and competitions during the first year of transfer under open enrollment. This restriction also shall apply to transfers resulting from an approved petition filed by a parent or guardian to transfer to an alternative receiving district under open enrollment. This one year restriction on participation in interscholastic contests and competitions does not restrict the student from practicing with an athletic team during the year of ineligibility. This one year restriction is not applicable to a student that:

Participates in an athletic activity in the receiving district that is not available in the district of residence.

Participates in an athletic activity for which the resident district and the receiving have a "cooperative student participation agreement" in place as provided by rule 36-20.

Has paid tuition for one or more years to the receiving school district prior to making application and being approved for open enrollment or has established eligibility by meeting the eligibility restriction requirements related to student transfer as provided by subrule 36.15(6).

Has attended the receiving district for one or more years, prior to making application and being approved for open enrollment, under a sharing or mutual agreement between the resident district and the receiving district, or only for the 1989-1990 school year, maintains eligibility, as provided by rule 36.15, even though the parent or guardian is no longer a resident of the receiving district.

17.6(3) Term of enrollment. A parent or guardian that has requested open enrollment, once this request has been approved by the receiving district, is committed to have their student attend the receiving district for a minimum of four years. The four year commitment is the minimum number of years for which an open enrollment request may be made. The term may exceed the four year minimum if requested by the parent or guardian and approved by the receiving district. This attendance commitment is not maintained if:

The student graduates.

The parent or guardian moves to another public school district.

The parent or guardian petitions the receiving district for permission to enroll the student in an alternative receiving district which may include return to the resident district.

17.6(4) Petition for attendance in an alternative receiving district. A parent or guardian may petition for open enrollment in an alternative receiving district (see 17.2) which may include return to their resident district. This request shall be filed with the receiving district.

The receiving district may approve or deny this request. If approved, the receiving district has five days from receipt of the request to transmit it to the alternative receiving district. Notification of this transmittal, or of action to deny the request, shall be sent to the parent or guardian within this same five day period. The alternative receiving district shall enroll the student unless it has insufficient classroom space or unless enrollment of the student would adversely affect a desegregation plan or order for the district. The alternative receiving district shall have fifteen days within which to act on the request for enrollment transfer. If the request is

denied, notice of this action shall be sent to the parent or guardian and the district filing the transfer. If the request is approved, the alternative district shall send notice of this action to the parent or guardian, to the district filing the transfer, and to the resident district of the student. Petitions for transfer shall be effectuated at the start of the school year or at the semester break of the transferring district.

17.6(5) Renewal of an open enrollment agreement. A parent or guardian may request renewal of an open enrollment agreement prior to the end of its term. This request shall be filed with the receiving district by no later than November 1 of the school year within which the term of approval is completed. The receiving district shall have until December 1 within which to act on the request and send notice of this action to the parent or guardian and their district of residence. If the renewal request is denied, the student shall be re-enrolled in their district of residence at the completion of the open enrollment term.

If a parent or guardian moves out of their district of residence during the term of an open enrollment agreement, the determination of whether to leave the student in the receiving district or enroll the student in the new district of residence shall be the option of the parent or guardian. If the determination is made to leave the student enrolled in the receiving district, the parent or guardian shall file a written notice of this intent with the receiving district and with the new district of residence. The new district of residence shall assume the tuition costs for the open enrolled student for the remainder of the original term of the open enrollment agreement. The original district of residence and the new

district of residence shall negotiate, if necessary, the proportionate amount of the district cost per pupil each owes to the receiving district.

17.6(6) Student governance. An open enrollment student, and where applicable the student's parent or guardian, shall be governed by the rules and policies established by the board of directors of the receiving district. Any complaint or appeal by the parent or guardian concerning the educational system, its process, or administration in the receiving district shall be initially directed to the board of directors of that district.

281.17.6(7) Appeal procedure. A parent or guardian may appeal the decision of the board of directors of a school district (resident or receiving) on any matter related to open enrollment. This appeal is to the state board of education and shall comply with the provisions of Iowa Code section 290.1; the appeal shall be filed within thirty days of the decision of the district board, it shall be in the form of an affidavit signed by the parent or guardian, and it shall state in a plain and concise manner what the parent or guardian feels to be the basis for appeal.

281.17.7(256) Transportation.

17.7(1) Parent responsibilities. The parent or guardian of a student that has been accepted for open enrollment shall be responsible to transport their student without reimbursement, except as provided in subrule 17.7(2), to and from a point on a regular school bus route of the receiving district. This point shall be a designated stop on the bus route of the receiving district. If this point--designated stop--is within the limits established by Iowa Code section 285.1 from the school designated for attendance by the receiving district, that district may, but is not required to provide transportation for

an open enrollment student. A receiving district shall not send buses into a resident district for the purpose of transporting an open enrollment student. Bus routes that are outside the boundary of the receiving district that have been authorized by an area education agency board of directors, as provided by Iowa Code subsection 285.9(3), may be used to transport open enrollment students. Bus routes established by the receiving district for the purpose of transporting nonpublic school students shall not be used to transport open enrollment students. Bus routes established by a receiving district to transport special education students shall not be used to transport open enrollment students unless the open enrollment student is a special education student.

17.7(2) Qualifications and provisions for transportation assistance. Open enrollment students that meet the eligibility requirements for free or reduced priced lunches as established by the National School Lunch and Child Nutrition Act shall receive transportation assistance from their resident district under the following conditions. The resident district is not required to provide any transportation assistance for a student involved in open enrollment with a district that is not contiguous with the student's resident district. The resident district shall provide transportation for the student to a point that is a designated stop on a regular bus route of a contiguous receiving district or as an alternative, district shall pay the parent or guardian for providing this transportation. In either situation the resident district is not obligated to expend more than the average cost per pupil transported amount established for that district for the previous school year. If the resident district provides the transportation, it shall determine that it is able to perform this function at a cost not in excess of the

average cost per pupil transported for the resident district as established the previous year. It shall not assess any additional cost to the parent for providing this transportation. If the district chooses to reimburse the parent or guardian for providing this transportation, determining the amount to be reimbursed to the parent or guardian, the district shall use the provisions of Iowa Code subsection 285.1(3). This reimbursement shall not exceed the average cost per pupil transported for the resident district as established the previous year. The resident district may withhold from the district cost per pupil it is required to pay to a receiving district for an open enrollment student the actual amount or the average cost per pupil transported amount it pays for transportation assistance, whichever is the lesser amount. In providing transportation assistance, the resident district shall insure the protection of the identity of students and parents qualifying for this assistance.

281.17.8(256) Method of finance. Open enrollment options shall be made available for students at no instructional cost to their parents or guardians. With the exception of the provisions of subrule 17.3(3), an open enrollment student shall be considered an enrolled resident student in their resident district and shall be included in the certified enrollment count of that district for the purposes of generating school foundation aid. The resident district shall pay each year to the receiving district an amount equal to the lower district cost per pupil of the two districts plus any moneys received from the student as a result of non-English speaking weighting provided by Iowa Code subsection 442.4(6) and phase III moneys

allocated to the district for the full-time equivalent attendance of the student as provided by Iowa Code chapter 294A. The resident district may deduct from this amount any transportation assistance funds for which the student is eligible as provided by subrule 17.7(2). These moneys shall be paid to the receiving district on a quarterly basis. The district cost per pupil shall be the cost calculated each year for the school year preceding the school year for which the open enrollment takes place.

281--17.9(256) Special education students. If a parent or guardian requests open enrollment for a student requiring special education, as provided by Iowa Code chapter 281, this request may receive consideration under the following conditions. The request shall only be granted if the receiving district maintains a special education instructional program appropriate to the student's needs and the enrollment of the student in the receiving district would not cause the size of the class in that special education instructional program to exceed the maximum class size as established in rule 41.6 or that program. In a situation where the appropriateness of the program is in question, the student shall remain enrolled in the program of the resident district until a final determination is made. The final determination of the appropriateness of a special education instructional program shall be the responsibility of the director of special education, following recommendation by a diagnostic-education team, of the area education agency to which the receiving district is assigned. In situations where there is no difference in appropriateness of the program for the individual special education student between the resident and the receiving district, the open enrollment request shall be approved.

Transportation requirements, parent or guardian responsibilities, and where applicable, financial assistance for an open enrollment special education student shall be as provided by rule 17.7.

The district of residence shall pay to the receiving district on a quarterly basis, the actual cost incurred by the receiving district in providing the appropriate special education program. These costs shall be based on the current year expenditures with needed adjustments made in the fourth quarter payment. The responsibility for insuring that an appropriate program is maintained for an open enrollment special education student shall rest with the resident district. The receiving district and the area education agency director shall provide, at least on an annual basis, evaluation reports and information to the resident district on each special education open enrollment student. For an open enrolled special education student where the receiving district is located in an area education agency other than the area education agency within which the residential district is located, the resident and the receiving district are required to forward a copy of any approved open enrollment request to director of special education of their respective area education agencies. Any moneys received by the area education or the resident district for an approved open enrollment special education student shall be forwarded to the receiving district's area education agency.

These rules are intended to implement Senate File 59 as amended by House File 774, Section 81 and enacted by the 1989 session of the Seventy-third General Assembly.

7-21-89

DATE

William L. Lepley

William L. Lepley

MINNESOTA

MINNESOTA

120.062 ENROLLMENT OPTIONS PROGRAM.

Subdivision 1. **Certain districts excluded.** For the 1989-1990 school year only, this section applies to a district that has more than 1,000 actual pupil units in kindergarten through grade 12.

Subd. 2. **Establishment.** An enrollment options program is established to enable any pupil to attend a school or program in a district in which the pupil does not reside, subject to the limitations in this section.

Subd. 3. **Closed districts.** A school board may, by resolution, determine that nonresident pupils may not attend any of its schools or programs according to this section.

Subd. 4. **Pupil application procedures.** In order that a pupil may attend a school or program in a nonresident district, the pupil's parent or guardian must submit an application to the nonresident district. The parent or guardian of a pupil residing in a district that does not have a desegregation plan approved by the state board of education must submit an application by January 1 for enrollment during the following school year. The parent or guardian of a pupil residing in a district that has a desegregation plan approved by the state board of education may apply to a district at any time. The application shall be on a form provided by the department of education. A particular school or program may be requested by the parent.

Subd. 5. **Desegregation plans.** A district that has a desegregation plan approved by the state board of education may limit the number of pupils who transfer into or out of the district. To remain in compliance with its desegregation plan, the district may establish the number of majority and minority group pupils who may transfer into or out of the district. The district may accept or reject applications in a manner that will enable compliance with the desegregation plan. The district shall notify the parent or guardian and the resident district according to the requirements of subdivision 6.

Subd. 6. **Nonresident district procedures.** Within 60 days of receiving an application, a district that does not exclude nonresident pupils, according to subdivision 3, shall notify the parent or guardian and the resident district in writing whether the application has been accepted or rejected. If an application is rejected, the district must state in the notification the reason for rejection.

Subd. 7. **Basis for decisions.** The school board must adopt, by resolution, specific standards for acceptance and rejection of applications. Standards may include the capacity of a program, class, grade level, or school building. Standards may not include

previous academic achievement, athletic or other extracurricular ability, handicapping conditions, proficiency in the English language, or previous disciplinary proceedings.

Subd. 8. **Waiver of deadlines.** Upon agreement of the resident and nonresident school boards, if applicable, the deadlines in subdivisions 4 and 6 may be waived.

Subd. 9. **Transportation.** If requested by the parent of a pupil, the nonresident district shall provide transportation within the district. The state shall pay transportation aid to the district according to section 124.225.

The resident district is not required to provide or pay for transportation between the pupil's residence and the border of the nonresident district. A parent may be reimbursed by the nonresident district for the costs of transportation from the pupil's residence to the border of the nonresident district if the pupil is from a family whose income is at or below the poverty level, as determined by the federal government.

Subd. 10. **Credits toward graduation.** A nonresident district shall accept credits toward graduation that were awarded by another district. The nonresident district shall award a diploma to a nonresident pupil if the pupil meets its graduation requirements.

Subd. 11. **Information.** A district that does not exclude nonresident pupils according to subdivision 3 shall make information about the district, schools, programs, policies, and procedures available to all interested people.

Subd. 12. **General education aid.** Adjustments to general education aid for the resident and nonresident districts shall be made according to section 124A.036, subdivision 5.

History: 1988 c 718 art 7 s 8

NOTE: This section is effective for the 1989-1990 school year and thereafter, See Laws 1988, chapter 718, article 7, section 66.

NOTE: Subdivision 1 is repealed June 30, 1990. See Laws 1988, chapter 718, article 7, section 65.

MINNESOTA
1989 AMENDMENTS

ARTICLE 9

MISCELLANEOUS

Section 1. Minnesota Statutes 1988, section 120.062, subdivision 4, is amended to read:

Subd. 4. [PUPIL APPLICATION PROCEDURES.] In order that a pupil may attend a school or program in a nonresident district, the pupil's parent or guardian must submit an application to the nonresident district. Before submitting an application, the pupil and the pupil's parent or guardian must explore with a school guidance counselor, or other appropriate staff member employed by the district the pupil is currently attending, the pupil's academic or other reason for applying to enroll in a nonresident district. The pupil's application must identify the reason for enrolling in the nonresident district. The parent or guardian of a pupil ~~residing in a district that does not have a desegregation plan approved by the state board of education~~ must submit an application by January 1 for initial enrollment ~~during~~ beginning the following school year. ~~The parent or guardian of a pupil residing in a district that has a desegregation plan approved by the state board of education may apply to a district at any time.~~ The application shall be on a form provided by the department of education. A particular school or program may be requested by the parent. Once enrolled in a nonresident district, the pupil may remain enrolled and is not required to submit annual or periodic applications. To return to the resident district or to transfer to a different nonresident district, the parent or guardian of the pupil must provide notice to the resident district of apply to a different nonresident district by January 1 for enrollment beginning the following school year.

Sec. 2. Minnesota Statutes 1988, section 120.062, subdivision 5, is amended to read:

Subd. 5. [DESEGREGATION PLANS DISTRICT TRANSFERS.] (a) This subdivision applies to a transfer into or out of a district that has a desegregation plan approved by the state board of education.

(b) An application to transfer may be submitted at any time for enrollment beginning at any time.

(c) The parent or guardian of a pupil who is a resident of a district that has a desegregation plan must submit an application to the resident district. If the district accepts the application, it must forward the application to the nonresident district.

(d) The parent or guardian of a pupil who applies for enrollment in a nonresident district that has a desegregation plan must submit an application to the nonresident district.

(e) Each district must accept or reject an application it receives and notify the parent or guardian in writing within 30 calendar days of receiving the application. A notification of acceptance must include the date enrollment can begin.

(f) If an application is rejected, the district must state the reason for rejection in the notification. If a district that has a desegregation plan rejects an application for a reason related to the desegregation plan, the district must state with specificity how acceptance of the application would result in noncompliance with state board rules with respect to the school or program for which application was made.

(g) If an application is accepted, the parent or guardian must notify the nonresident district in writing within 15 calendar days of receiving the acceptance whether the pupil intends to enroll in the nonresident district. Notice of intention to enroll obligates the pupil to enroll in the nonresident district, unless the school boards of the resident and nonresident districts agree otherwise. If a parent or guardian does not notify the nonresident district, the pupil may not enroll in that nonresident district at that time, unless the school boards of the resident and nonresident district agree otherwise.

(h) Within 15 calendar days of receiving the notice from the parent or guardian, the nonresident district shall notify the resident district in writing of the pupil's intention to enroll in the nonresident district.

(i) A pupil enrolled in a nonresident district under this subdivision is not required to make annual or periodic application for enrollment but may remain enrolled in the same district. A pupil may transfer to the resident district at any time.

(j) A pupil enrolled in a nonresident district and applying to transfer into or out of a district that has a desegregation plan must follow the procedures for this subdivision. For the purposes of this type of transfer, "resident district" means the nonresident district in which the pupil is enrolled at the time of application.

(k) A district that has a desegregation plan approved by the state board of education ~~may--limit-the-number-of-pupils-who transfer-into-or-out-of-the-district.--To-remain-in-compliance-with its-desegregation-plan,-the-district-may-establish-the-number-of majority-and-minority-group-pupils-who-may-transfer-into-or-out-of the-district.--The-district-may~~ must accept or reject ~~applications~~ each individual application in a manner that will enable compliance with ~~the~~ its desegregation plan. ~~The-district-shall-notify-the parent--or--guardian-and--the-resident--district-according--to--the requirements-of-subdivision-6.~~"

Sec. 3. Minnesota Statutes 1988, section 120.062, subdivision 6, is amended to read:

Subd. 6. [NONRESIDENT DISTRICT PROCEDURES.] ~~Within-60-days of--receiving--an-application,~~ A district that does not exclude nonresident pupils, according to subdivision 3, shall notify the parent or guardian ~~and-the-resident-district~~ in writing by February 1 whether the application has been accepted or rejected. If an application is rejected, the district must state in the

notification the reason for rejection. The parent or guardian shall notify the nonresident district by February 15 whether the pupil intends to enroll in the nonresident district. Notice of intent to enroll in the nonresident district obligates the pupil to attend the nonresident district during the following school year, unless the school boards of the resident and the nonresident districts agree in writing to allow the pupil to transfer back to the resident district, or the pupil's parents or guardians change residence to another district. If a parent or guardian does not notify the nonresident district, the pupil may not enroll in that nonresident district during the following school year, unless the school boards of the resident and nonresident district agree otherwise. The nonresident district shall notify the resident district by March 1 of the pupil's intent to enroll in the nonresident district. The same procedures apply to a pupil who applies to transfer from one participating nonresident district to another participating nonresident district.

ADDITIONAL LEGISLATIVE LANGUAGE IMPACTING MINNESOTA'S CHOICE PLAN

MINNESOTA STATE BOARD OF EDUCATION RULES

PART 3625.0800.

Subp. 8. Pupils placed through education choice options. When a pupil is placed outside of the district residence by the parent or pupil for the purpose of education and in accordance with a statutory education choice enrollment act, the resident district shall be responsible for assuming the enrollment act, the resident district shall be responsible for assuming the cost of the education program when notified in accordance with Minnesota Statutes, section 124A.036, subdivision 3. The providing district shall be responsible for assuring that an appropriate program is available for the pupil including the notice and hearing provisions. Responsibility for transportation costs between the pupil's home and the providing school district shall be determined in accordance with Minnesota Statutes.

MINNESOTA STATUTES

124A.036 PAYMENTS TO RESIDENT AND NONRESIDENT DISTRICTS.

(d) The district of residence shall pay tuition to a district providing special instruction and services to a handicapped pupil, as defined in section 120.03, who is enrolled in a program listed in this subdivision. The tuition shall be equal to (1) the actual cost of providing special instruction and services to the pupil, including a proportionate amount for debt service and for capital expenditure facilities and equipment, and debt service but not including any amount for transportation, minus (2) the amount of special education aid, attributable to that pupil, that is received by the district providing special instruction and services.

History: 1981 c 358 art 1 s 28; 1982 c 548 art 1 s 11; 1983 c 314 art 1 s 22; 1987 c 398 art 8 s 10; 1988 c 486 s 56,57; 1988 c 718 art s 32,33

NEBRASKA

LEGISLATURE OF NEBRASKA

NINETY-FIRST LEGISLATURE

FIRST SESSION

Legislative Bill 183

FINAL READING

Introduced by Baack, 47; Bernard-Stevens, 42; Withem, 14; McFarland, 28; Elmer, 38

Read first time January 5, 1989

Committee: Education

A BILL

FOR AN ACT relating to schools; to amend sections 79-420, 79-701, 79-1331, and 79-3330, Reissue Revised Statutes of Nebraska, 1943; to state intent; to provide students the option of attending a school in a district other than the one in which he or she resides; to define and redefine terms; to provide procedures relating to applications as prescribed; to provide duties for the resident and option districts; to create a fund; to provide for payments as prescribed; to require a study; to change provisions for the amount paid to a

servicing agency; to harmonize provisions; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. The Legislature hereby finds and declares that parents and legal guardians have the primary responsibility of ensuring that their children receive the best education possible. In recognition of this responsibility, the Legislature intends to provide educational options for parents and legal guardians, when deciding what public school or public school district is best for their children, by allowing them to consider the following factors, including, but not limited to:

(1) The size of the schools and school districts in the area;

(2) The distance children have to travel and the ease and availability of transportation;

(3) The course offerings and extracurricular offerings of the schools and school districts in the area;

(4) The quantity and quality of the staff at such schools and school districts; and

(5) The performance of the school district on any indicators of performance established by the State Department of Education.

Sec. 2. For purposes of sections 1 to 17 of this act:

(1) Enrollment option program shall mean the

program established in section 3 of this act:

(2) Option school district shall mean the school district that a student chooses to attend other than his or her resident school district;

(3) Option student shall mean a student that has chosen to attend a school district other than his or her resident school district; and

(4) Resident school district shall mean the school district in which a student resides.

Sec. 3. An enrollment option program is hereby established to enable any student to attend a school in a school district in which the student does not reside subject to the limitations prescribed in section 7 of this act. The option shall be available only once to each student prior to graduation unless the student relocates in a different resident school district. This program shall not apply to any student in the ninth, tenth, eleventh, or twelfth grade who resides in a Class I school district that is not part of a Class VI school district.

Sec. 4. For purposes of all duties, entitlements, and rights established by law, including special education as provided in section 79-3320, except transportation as provided in section 10 of this act, option students shall be treated as resident students of

the option school district.

Sec. 5. (1) For the 1990-91 school year, participation in the enrollment option program shall be voluntary and shall be agreed upon by both the resident school district and the option school district.

(2) For the 1991-92 school year, participation in the enrollment option program shall be voluntary on the part of the option school district. The resident school district shall be required to participate in the program until more than five percent of the students choose to attend option school districts at which time the resident school district may choose not to participate further in the program.

(3) For the 1992-93 school year, participation in the enrollment option program shall be voluntary on the part of the option school district. The resident school district shall be required to participate in the program until more than ten percent of the students choose to attend option school districts at which time the resident school district may choose not to participate further in the program.

(4) Beginning with the 1993-94 school year, the enrollment option program shall be implemented by all public school districts.

Sec. 6. For a student to attend a school in

an option school district, the student's parent or legal guardian shall initially submit an application to the school board or board of education of the option school district and of the resident school district and to the State Department of Education by January 1 for enrollment during the following and subsequent school years. The application shall set forth in detail the substantial educational opportunity available to the option student in the option school district that is unavailable in the resident school district. A particular school may be requested, but the school assignment of the option student shall be determined by the option school district.

The student shall attend the option school district until graduation or relocation in a different resident school district unless the student chooses to return to the resident school district in which case the student's parent or legal guardian shall submit a cancellation form to the school board or board of education of the option school district and the resident school district and to the department by January 1 for automatic approval for the following school year. No student shall attend an option school district for less than one school year unless he or she relocates to a different resident school district or completes

requirements for graduation prior to the end of his or her senior year.

The application and cancellation forms shall be prescribed and furnished by the State Department of Education.

Sec. 7. The school board or board of education of the option school district shall adopt by resolution specific standards for acceptance and rejection of applications. Standards may include the capacity of a program, class, grade level, or school building or the availability of appropriate special education programs. The school board or board of education of the option school district may by resolution declare a program, a class, or a school unavailable to option students due to lack of capacity. Standards shall not include previous academic achievement, athletic or other extracurricular ability, handicapping conditions, proficiency in the English language, or previous disciplinary proceedings.

It shall be unlawful for any employee, agent, or legal representative of any school district to initiate any contact by personal visitation, phone call, written correspondence, or public advertisement with any parent, legal guardian, or student residing in any other school district for purposes of encouraging such parent

or legal guardian to send his or her student to or encouraging such student to attend the school district of such employee, agent, or legal representative.

A school district that has a desegregation plan adopted by the school board or the board of education or ordered by the federal court may limit the number of students who transfer into or out of the school district. The school board or board of education of such school district shall adopt specific standards for acceptance and rejection of applications for transfer into or out of such district. Standards shall be designed to facilitate the school district's desegregation plan and maintain or improve the integration of the school district.

Any option school district shall give first priority for enrollment to option students whose request for enrollment would aid the racial integration of the option school district and the resident school district.

For purposes of this section, racial integration is aided if a student transfers to an option school district in which his or her race is a smaller percentage of the total student enrollment of the option school district than it is of the student's resident school district.

Sec. 8. On or before April 1, the option

school district shall notify the parent or legal guardian of the student, the resident school district, and the State Department of Education, in writing, whether the application is accepted or rejected. If an application is rejected, the option school district shall state in the notification the reason for the rejection. The parent or legal guardian may appeal a rejection to the State Board of Education within thirty days of the date the notification of the rejection was sent. Such hearing shall be held in accordance with the Administrative Procedure Act and shall determine whether the procedures of sections 3 to 9 of this act have been followed.

Sec. 9. Upon agreement of the school boards or boards of education of the resident school and option school districts, the deadlines for application and approval or rejection in sections 6 and 8 of this act may be waived.

Sec. 10. Sections 79-490 and 79-3322 shall not apply to the transportation of an option student. The parent or legal guardian of the option student shall be responsible for required transportation. A school district may upon mutual agreement with the parent or legal guardian of a student provide transportation to the option student.

Sec. 11. A student in the ninth, tenth, eleventh, or twelfth grade who transfers to an option school district shall be ineligible to compete in athletic competition sponsored by the option school district, the resident school district, or both for one school year after his or her attendance in the option school district begins, except that (1) this waiting period shall not apply if the resident school district and option school district have joint teams and (2) the resident school district may waive the waiting period upon a determination by the resident school district that the transfer was sought and granted for the purpose of improvement of educational opportunities for the student unrelated to participation in such athletic competition. No such ineligibility shall occur when the option student returns to his or her resident school district if such student submits a cancellation form.

Sec. 12. An option school district shall accept credits toward graduation that were awarded by another school district. The option school district shall award a diploma to an option student if the student meets its graduation requirements.

Sec. 13. A school district shall make information about the school district and its schools, programs, policies, and procedures available to all

interested people.

Sec. 14. The enrollment option program shall not preclude a school district from contracting with other school districts, educational service units, or other state-approved entities for the provision of services.

Sec. 15. The resident school district shall, for each option student who resides in such school district, including option students who are handicapped, remit to the option school district in two equal payments, with the first payment on or before January 15 and the second payment on or before June 15 of each school year, an amount equal to the appropriate rate as established in subdivisions (1) through (4) of section 79-1334 plus the appropriate rate as established in subsection (1) of section 79-1336. The State Department of Education shall notify every school district by July 15 of each year regarding the rates calculated pursuant to such sections for the upcoming school year. The resident school district shall count all students, regardless of whether they attend an option school district, when making calculations for the School Foundation and Equalization Act.

If an option student relocates in a different school district during the school year, the resident

school district shall prorate the amount remitted to the option school district pursuant to this section according to the proportionate amount of time the student attended the option school district.

Sec. 16. The State Department of Education shall reimburse each option school district for special education programs provided to option students in accordance with section 79-3332.

The resident school district of an option student shall be exempted from the payment responsibility set forth in section 79-3330.

For purposes of calculation to determine reimbursement pursuant to section 79-3332, the option school district shall not include the adjusted average per pupil cost, as defined in section 79-3304, of option handicapped students. The resident school district shall include such adjusted average per pupil cost when determining such reimbursement for each Level II handicapped student attending an option school district. Any resident school district in which the adjusted average per pupil cost exceeds the amount of reimbursement due, as calculated pursuant to section 79-3332, shall remit the difference to the State Treasurer for credit to the Special Education Enrollment Options Fund, which fund is hereby created. Any money

in the fund available for investment shall be invested by the state investment officer pursuant to sections 72-1237 to 72-1276.

Sec. 17. By September 1, 1991, and each year thereafter until 1995, the State Department of Education shall provide a report to the Legislature concerning the operation of the enrollment option program over the previous year. The report shall include, but not be limited to, the following information:

(1) The number of students who applied to attend an option school district and the number of students whose applications were approved by each option school district;

(2) The educational reasons listed for the transfer to option school districts;

(3) The number of students whose applications were rejected by option school districts and the reasons for the rejection;

(4) The number of appeals regarding the rejection of applications before the State Board of Education and the number of appeals which were successful;

(5) Which school districts participated in the enrollment option program and the number of students from each resident school district who transferred to an

option school district;

(6) Any problems that the department became aware of regarding the enrollment option program and any suggestions for improvement in the current provisions of the program; and

(7) Any other pertinent data that would help the Legislature refine the enrollment option program.

Sec. 18. The Education Committee of the Legislature shall conduct a study during the 1989 interim of issues relating to providing students the option of attending a school district outside their place of residence. The study shall include input from educators and parents representing schools of all sizes within the state and data concerning the effect of such a program in any state which has studied this issue or currently has such a program. It shall include, but not be limited to, study of the following issues:

(1) Whether such a program will result in improved educational opportunities for individual students;

(2) Whether such a program will result in the closing of smaller schools;

(3) Whether such a program will result in improvement or cause deterioration of the educational quality of rural schools;

(4) Whether such a program will lead to recruiting of students with special skills and talents;

(5) Whether such a program will lead to deterioration of the financial base of rural schools;

(6) Whether it is feasible to offer transportation based on need to option students as defined in section 2 of this act; and

(7) Whether the provisions of sections 1 to 17 of this act satisfactorily deal with concerns regarding racial integration.

Upon completion of the study, the committee shall make a report of its findings and recommendations to the Legislature on or before January 1, 1990.

Sec. 19. That section 79-420, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

79-420. When, for a period of one school term, a school district (1) has less than three legal voters residing therein or (2) either fails to maintain a public elementary school within the district, in which are enrolled and in regular attendance for at least one thousand thirty-two hours one or more pupils of school age residing in the district, other than option students as defined in section 2 of this act, or does not contract for the tuition and transportation of pupils of

such district with another district or districts and have pupils attending school regularly for at least one thousand thirty-two hours under such contract or contracts, it shall be the duty of the county superintendent of the county in which such district lies to dissolve such district and attach the territory of such district to one or more neighboring school districts, except that before dissolving a district under this section, the county superintendent shall fix a time for a hearing and shall notify each legal resident of the district at least fifteen days before such hearing. ~~In such instances where such dissolution shall~~ When the dissolution will create extreme hardships on the pupils of the district affected, the State Board of Education may, on application by the school board or board of education of the district and the recommendation of the county superintendent of the county in which the district is located, annually waive the requirements of this section. Notification shall be by mail or by publication in a newspaper of general circulation in the area.

If the county superintendent finds that the district is required by this section to be dissolved, he or she shall enter an order dissolving the district and attach the territory of such district to one or more

neighboring school districts. Dissolutions involving the transfer of territory across county lines shall be acted upon jointly by the county superintendents of the counties concerned. Appeals from the action of the county superintendent may be made to the district court of the county of the official concerned. The county superintendent shall distribute the assets of the closed district among the other district or districts to which the property has been attached in proportion to the actual valuation of the property attached to such district or districts.

Sec. 20. That section 79-701, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

79-701. (1) A Class II school district shall be created whenever a Class I school district determines by a majority vote of the electors to establish a high school.

(2) The members of the school board serving when it is decided to establish a high school shall continue in office until the first Tuesday in June following the next statewide primary election at which election a six-member board shall be elected. The three receiving the highest number of votes shall be elected for ~~a term~~ terms of four years, and the three receiving

the next highest number of votes shall be elected for a term terms of two years.

(3) If a Class II school district, by a vote of fifty-five percent of the legal voters voting at an annual or special meeting, decides to discontinue the high school and close the same, the school district shall thereupon become a Class I school district on the date designated by such voters. At such meeting a decision shall be made as to when the new board of education shall be elected and whether the board shall consist of three members or six members. No new Class I school district shall establish a six-member board unless the school district contains a minimum of one hundred fifty children between five and twenty-one years of age pursuant to section 79-601. The board of education of the existing Class II school district shall remain in office until the effective date for the formation of the new Class I school district.

If the new board of education is to consist of three members, such members shall be elected at the time the electors vote to change from a Class II school district to a Class I school district or at any annual or special meeting held not less than thirty days prior to the effective date of the change from a Class II school district to a Class I school district. At the

annual or special meeting, a treasurer shall be elected for a term of one year, a secretary for a term of two years, and a president for a term of three years, and regularly thereafter their successors shall be elected for ~~the term~~ terms of three years each. All ~~and all~~ officers so elected shall hold their offices until ~~their~~ successors are elected and qualified. After such change becomes effective, the school district and its officers shall have the powers and be governed by the provisions of law applicable to Class I school districts.

If the new board of education is to consist of six members, such members shall be elected after school district electors have voted to change from a Class II school district to a Class I school district. The procedure for electing board members shall be as prescribed in subsection (3) of section 79-601, except that such election may be held at any annual meeting or at a special meeting called for the purpose of electing school district officers.

(4) No school district may change from Class I to Class II unless that school district has an enrollment of not less than one hundred pupils in grades nine to twelve. This subsection shall not apply to any school district located on an Indian reservation and substantially or totally financed by the federal

government.

(5) If for three consecutive years the average daily membership of an existing Class II school district is less than twenty-five pupils in grades nine through twelve or ~~after July 10, 1984,~~ if for one year an existing Class II school district contracts with a neighboring school district or districts to provide educational services for all of its pupils in grades nine through twelve, such school district shall, except as provided in subsection (6) of this section, become a Class I school district through the order of the county superintendent if the high school is within fifteen miles on a reasonably improved highway of another high school. A resident school district as defined in section 2 of this act shall not count students attending an option school district as defined in section 2 of this act when calculating average daily membership for purposes of this subsection. This subsection shall not apply to any school district located on an Indian reservation and substantially or totally financed by the federal government.

(6) Any Class II school district maintaining a four-year high school which has an average daily membership of less than twenty-five students in grades nine through twelve for three consecutive years may

contract with another school district to provide educational services for its pupils in grades nine through twelve. Such contract may continue for a period not to exceed three years. At the end of such three-year period the school district may resume educational services for grades nine through twelve if the average daily membership in grades nine through twelve for such school district has reached at least fifty students, except that ~~after July 10, 1984,~~ a Class II school district may contract pursuant to this subsection for a period of only one year and at the end of such one-year period the school district may resume educational services for grades nine through twelve if the average daily membership in grades nine through twelve for such school district has reached at least fifty students. If the school district has not achieved such average daily membership, it shall become a Class I school district as prescribed in subsection (5) of this section.

Sec. 21. That section 79-1331, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

79-1331. As used in the School Foundation and Equalization Act, unless the context otherwise requires:

(1) Classroom teacher shall mean a

certificated teacher who has major responsibility for the instruction of one or more classes of pupils;

(2) District shall mean a school district approved for continued legal operation under rules and regulations ~~established~~ adopted and promulgated by the State Board of Education pursuant to subdivision (5)(c) of section 79-328;

(3) Per pupil cost shall mean a district's current operating expense, as shown in the district's annual financial report to the State Department of Education, divided by the average daily membership of resident and nonresident pupils for the preceding school year;

(4) Operating funds shall mean a district's current operating revenue for a fiscal year as shown in the district's annual financial report to the State Department of Education;

(5) Summer school program shall mean a progra consisting of thirty days of school at three hours p day, or the equivalent, conducted by a district to me the academic needs of its pupils during a period othe than the regular school year;

(6) Fall school district membership repo shall mean a report setting forth the number of childr between the ages of five and twenty-one enrolled in th

district on the last Friday in September of a given school year. The report shall enumerate (a) resident students by grade level and nonresident students and option students as defined in section 2 of this act by grade level and classification, including, but not limited to, nonresident high school, option high school, wards of the court, or contract, (b) eligible children in gifted and deprived programs as approved and verified by the state, (c) children eligible to be transported by bus according to section 79-490, and (d) total assessed valuation for the current fiscal year; and

(7) January school district membership report shall mean a report setting forth the number of children between the ages of five and twenty-one enrolled in the district on the first Friday in January of a given school year. Such report shall contain the information prescribed in subdivisions (6)(a) through (6)(d) of this section.

Sec. 22. That section 79-3330, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

79-3330. Except as provided in section 79-3331 and sections 1 to 17 of this act, each school district shall pay an amount equal to the average per pupil cost of the servicing agency of the preceding year

or the cost as agreed upon pursuant to the contract to the agency providing the educational program for every child who is a resident of the district and attending an educational program not operated by the school district, including programs operated by the State Department of Education, the Department of Public Institutions, and any other servicing agency whose programs are approved by the State Department of Education.

Sec. 23. That original sections 79-420, 79-701, 79-1331, and 79-3330, Reissue Revised Statutes of Nebraska, 1943, are repealed.

NEBRASKA DEPARTMENT OF EDUCATION

RULE 7

REGULATIONS AND STANDARDS FOR ENROLLMENT OPTION PROGRAM

TITLE 92, NEBRASKA ADMINISTRATIVE CODE, CHAPTER 7

DRAFT

October 17, 1989

State of Nebraska
Department of Education
301 Centennial Mall South
Lincoln, Nebraska 68509
Joseph E. Lutjeharms
Commissioner

TITLE 92 - NEBRASKA DEPARTMENT OF EDUCATION
CHAPTER 7 - ENROLLMENT OPTION PROGRAM

001 General Information

001.01 Statutory Authority. This chapter is adopted pursuant to the authority of Sections 79-328 and 79-3401 through 79-3416 of the Revised Statutes of Nebraska (R.R.S.).

001.02 Scope and Application. This chapter contains regulations governing the enrollment option program, which allows a Nebraska student, under certain circumstances, to attend a school in a Nebraska school district in which the student does not reside. This program does not apply to any student in the ninth, tenth, eleventh, or twelfth grade who resides in a Class I (elementary grades only) school district that is not part of a Class VI (secondary grades only) school district.

001.03 Implementation of the Program:

001.03A For the 1990-91 school year, participation in the enrollment option program shall be voluntary and shall be agreed upon by both the resident school district and the option school district.

001.03B For the 1991-92 school year, participation in the enrollment option program shall be voluntary on the part of the option school district. The resident school district shall be required to participate in the program until more than five percent of the students choose to attend option school districts at which time the resident school district may choose not to participate further in the program.

001.03C For the 1992-93 school year, participation in the enrollment option program shall be voluntary on the part of the option school district. The resident school district shall be required to participate in the program until more than ten percent of the students choose to attend option school districts at which time the resident school district may choose not to participate further in the program.

001.03D Beginning with the 1993-94 school year, the enrollment option program shall be implemented by all public school districts.

002 Definition of Terms

As used in this chapter:

002.01 Department shall mean the Nebraska State Department of Education.

002.02 Option school district shall mean the school district that a student chooses to attend other than his or her resident school district.

002.03 Option student shall mean a student who has chosen to attend a school district other than his or her resident school district.

002.04 Resident school district shall mean school district in which a student resides.

003 Application Procedures

003.01 Initial Application. For a student to attend a school in an option school district, the student's parent or legal guardian shall initially submit an application to the school board or board of education of the option school district and of the resident school district and to the Department by January 1 for enrollment during the following and subsequent school years. The application shall set forth in detail the substantial educational opportunity available to the option student school district that is unavailable in the resident school district. A particular school may be requested, but the school assignment of the option student shall be determined by the option school district.

003.02 Cancellation and Limitation of Option. The option shall be available only once to each student prior to graduation unless the student relocates in a different resident school district. The student shall attend the option school district until graduation or relocation in a different resident school district unless the student chooses to return to the resident school district, in which case the student's parent or legal guardian shall submit a cancellation form to the school board or board of education of the option school district and the resident school district and to the Department by January 1 for automatic approval for the following school year. No student shall attend an option school district for less than one school year unless he or she relocates to a different resident school district or completes requirements for graduation prior to the end of his or her senior year.

003.03 Forms. Application and cancellation forms shall be those prescribed and furnished by the Department.

003.04 Release of Information. The initial application shall constitute consent for the resident school district to release student records information regarding special education services to the option school district. Upon request from the option district, the resident district shall provide a copy, at its expense, of all such records within 15 calendar days of the receipt of the request.

003.05 Withdrawal of Application. Once an application is submitted, it may only be withdrawn if there is another immediate family member whose application to the same option school district is rejected. In such a

case, the withdrawal notice shall be submitted to the option district within 15 days of notification.

004 School District Requirements

004.01 Adoption of District Standards. The school board of board of education of the option school district shall adopt by resolution specific standards for acceptance and rejection of applications. Standards may include the capacity of a program, class, grade level, or school building or the availability of appropriate special education programs. The school board or board of education of the option school district may by resolution declare a program, a class, or a school unavailable to option students due to lack of capacity. Standards shall not include previous academic achievement, athletic or other extracurricular ability, handicapping conditions, proficiency in the English language, or previous disciplinary proceedings. Standards shall be in writing and a copy of such standard shall be available for review in each school building in the district. Copies shall be provided at cost or less to any person upon request.

004.02 Initiation of Contact Prohibited. It shall be unlawful for any employee, agent, or legal representative of any school district to initiate any contact by personal visitation, phone call, written correspondence, or public advertisement with any parent, legal guardian, or student residing in any other school district for purposes of encouraging such parent or legal guardian to send his or her student to or encouraging such student to attend the school district of such employee, agent, or legal representative. However, a school district shall make information about the school district and its schools, programs, policies, and procedures available to all interested people.

004.03 Desegregation Plan Districts. A school district that has a desegregation plan adopted by the school board or the board of education or ordered by the federal court may limit the number of students who transfer into or out of the school district. The school board or board of education of such school district shall adopt specific standards for acceptance and rejection of applications for transfer into or out of such district. Standards shall be designed to facilitate the school district's desegregation plan and maintain or improve the integration of the school district. Any option school district shall give first priority for enrollment to option students whose request for enrollment would aid the racial integration of the option school district resident school district. For purposes of this section, racial integration is aided if a student transfers to an option school district in which his or her race is a smaller percentage of the total student enrollment of the option school district than it is of the student's resident school district.

004.04 Approval or Rejection. On or before February 1, the resident school district shall notify the parent or legal guardian of the student, the option school district, and the Department, in writing, if the application is rejected. If the resident district approves the

application, it shall notify the option school district in writing of its actions. On or before April 1, the option school district shall notify the parent or legal guardian of the student, the resident school district, and the Department, in writing, whether the application is accepted or rejected. If an application is rejected, the option school district shall state in the notification the reason for the rejection.

004.05 Deadline Extension. Upon agreement of the school boards or boards of education of the resident school and option school districts, the deadlines for application and approval or rejection in this chapter may be waived.

004.06 Duties to Students. For purposes of all duties, entitlements, and rights established by law, including special education as provided in Section 79-3320, except transportation as provided in this chapter, option students shall be treated as resident students of the option school district.

004.07 Transportation of Students. Sections 79-490 and 79-3322 shall not apply to the transportation of an option student. The parent or legal guardian of the option student shall be responsible for required transportation. A school district may upon mutual agreement with the parent or legal guardian of a student provide transportation to the option student.

004.08 Athletic Competition by Students. A student in the ninth, tenth, eleventh, or twelfth grade who transfers to an option school district shall be ineligible to compete in interscholastic athletic competition sponsored by the option school district, the resident school district, or both for one school year after his or her attendance in the option school district begins, except that:

004.08A This waiting period shall not apply if the resident school district and option school district have joint teams;

004.08B The resident school district may waive the waiting period upon a determination by the resident school district that the transfer was sought and granted for the purpose of improvement of educational opportunities for the student unrelated to participation in such athletic competition;

004.08C No such ineligibility shall occur when the option student returns to his or her resident school district if such student submits a cancellation form; and

004.08D If a student has been attending the option district on contract or by paying tuition, there shall be no period of ineligibility under this chapter.

004.09 Credits and Graduation. An option school district shall accept credits toward graduation that were awarded by another school district.

The option school district shall award a diploma to an option student if the student meets its graduation requirements.

004.10 Contracting for Services. The enrollment option program shall not preclude a school district from contracting with other school districts, educational service units, or other state-approved entities for the provision of services.

004.11 Payments from Resident District to Option District. The resident school district shall for each option student who resides in such school district, including option students who are handicapped, remit to the option school district in two equal payments, with the first payment on or before January 15 and the second payment on or before June 15 of each school year, an amount equal to the appropriate rate as established in subdivisions (1) through (4) of Section 79-1334 R.R.S. plus the appropriate rate as established in subsection (1) of Section 79-1336 R.R.S. The Department shall notify every school district by July 15 of each year regarding the rates calculated pursuant to such sections for the upcoming school year. The resident school district shall count all students, regardless of whether they attend an option school district, when making calculations for the School Foundation and Equalization Act. If an option student relocates in a different school district during the school year, the resident school district shall prorate the amount remitted to the option school district pursuant to this section according to the proportionate amount of time the student attended the option school district. Such proration shall be by instruction hour.

004.12 Special Education Services. The Department shall reimburse each option school district for special education programs provided to option students in accordance with Section 79-332 R.R.S. The resident school district of an option student shall be exempted from the payment responsibility set forth in Section 79-330 R.R.S. For purposes of calculation to determine reimbursement pursuant to Section 79-3332 R.R.S., the option school district shall not include the adjusted average per pupil cost, as defined in Section 79-3304 R.R.S., of option handicapped students. The resident school district shall include such adjusted average per pupil cost when determining such reimbursement for each Level II handicapped student attending an option school district. Any resident school district in which the adjusted average per pupil cost exceeds the amount of reimbursement due, as calculated pursuant to Section 79-3332 R.R.S., shall remit the difference to the State Treasurer for credit to the Special Education Enrollment Options Funds, which fund is hereby created. Any money in the fund available for investment shall be invested by the state investment officer pursuant to Sections 79-1237 to 72-1276 R.R.S. Funds received pursuant to Sections 79-1330 through 79-1334 shall not be included as accountable receipts for special education purposes.

005 Appeals

The parent or legal guardian may appeal a rejection of an application to the State Board of Education within thirty days of the date the notification of the rejection was sent. Appeals shall be conducted pursuant to Title 92, Nebraska Administrative Code, Chapter 61. Hearings shall determine whether the procedures of sections 3 to 9 of LB 183, 1989 session, have been followed.

OHIO

Sec. 3313.98. (A) AS USED IN THIS SECTION AND SECTION 3313.981 OF THE REVISED CODE:

(1) "PARENT" HAS THE MEANING GIVEN IN SECTION 3313.64 OF THE REVISED CODE.

(2) "NATIVE STUDENT" MEANS A STUDENT ENTITLED UNDER SECTION 3313.64 OR 3313.65 OF THE REVISED CODE TO ATTEND SCHOOL IN A DISTRICT ADOPTING A RESOLUTION UNDER THIS SECTION.

(3) "ADJACENT DISTRICT" MEANS A CITY, EXEMPTED VILLAGE, OR LOCAL SCHOOL DISTRICT HAVING TERRITORY THAT ABUTS THE TERRITORY OF A DISTRICT ADOPTING A RESOLUTION UNDER THIS SECTION.

(4) "ADJACENT DISTRICT STUDENT" MEANS A STUDENT ENTITLED UNDER SECTION 3313.64 OR 3313.65 OF THE REVISED CODE TO ATTEND SCHOOL IN AN ADJACENT DISTRICT.

(5) "ADJUSTED FORMULA AMOUNT" MEANS THE DOLLAR FORMULA AMOUNT SPECIFIED IN SECTION 3317.022 OF THE REVISED CODE MULTIPLIED BY THE SCHOOL DISTRICT EQUALIZATION FACTOR FOR A DISTRICT DEFINED IN DIVISION (E) OF SECTION 3317.02 OF THE REVISED CODE.

(6) "POVERTY LINE" MEANS THE POVERTY LINE ESTABLISHED BY THE DIRECTOR OF THE UNITED STATES OFFICE OF MANAGEMENT AND BUDGET AS REVISED BY THE DIRECTOR OF THE OFFICE OF COMMUNITY SERVICES IN ACCORDANCE WITH SECTION 673(2) OF THE "COMMUNITY SERVICES BLOCK GRANT ACT," 95 STAT. 1609, 42 U.S.C.A. 9902, AS AMENDED.

(7) "IEP" MEANS AN INDIVIDUALIZED EDUCATION PROGRAM DEFINED BY DIVISION (E) OF SECTION 3323.01 OF THE REVISED CODE.

(B) THE BOARD OF EDUCATION OF EACH CITY, LOCAL, AND EXEMPTED VILLAGE SCHOOL DISTRICT SHALL ADOPT A RESOLUTION PERTAINING TO ENROLLMENT OF STUDENTS FROM ADJACENT DISTRICTS. THE RESOLUTION SHALL, BEGINNING WITH THE SCHOOL YEAR THAT BEGINS JULY 1, 1993, EITHER ENTIRELY PROHIBIT THE ENROLLMENT OF STUDENTS FROM ADJACENT DISTRICTS OR SHALL PERMIT ENROLLMENT OF STUDENTS FROM ALL ADJACENT DISTRICTS IN ACCORDANCE WITH A POLICY CONTAINED IN THE RESOLUTION. A POLICY PERMITTING ENROLLMENT OF STUDENTS FROM ADJACENT DISTRICTS SHALL PROVIDE FOR ALL OF THE FOLLOWING:

(1) APPLICATION PROCEDURES, INCLUDING DEADLINES FOR APPLICATION AND FOR NOTIFICATION OF STUDENTS AND THE SUPERINTENDENTS OF ADJACENT DISTRICTS WHENEVER AN ADJACENT DISTRICT STUDENT'S APPLICATION IS APPROVED.

(2) PROCEDURES FOR ADMITTING APPLICANTS FROM ADJACENT SCHOOLS FREE OF ANY TUITION OBLIGATION TO THE DISTRICT'S SCHOOLS, INCLUDING BUT NOT LIMITED TO:

(a) THE ESTABLISHMENT OF DISTRICT CAPACITY LIMITS BY GRADE LEVEL, SCHOOL BUILDING, AND EDUCATION PROGRAM;

(b) A REQUIREMENT THAT ALL NATIVE STUDENTS WISHING TO BE ENROLLED IN THE DISTRICT WILL BE ENROLLED AND THAT ANY ADJACENT DISTRICT STUDENTS PREVIOUSLY ENROLLED IN THE DISTRICT SHALL RECEIVE PREFERENCE OVER FIRST-TIME APPLICANTS;

(c) PROCEDURES TO ENSURE THAT AN APPROPRIATE RACIAL BALANCE IS MAINTAINED IN THE DISTRICT SCHOOLS.

(C) THE PROCEDURES FOR ADMITTING ADJACENT DISTRICT STUDENTS SHALL NOT INCLUDE:

(1) ANY REQUIREMENT OF ACADEMIC ABILITY, OR ANY LEVEL OF ATHLETIC, ARTISTIC, OR OTHER EXTRACURRICULAR SKILLS;

(2) LIMITATIONS ON ADMITTING APPLICANTS BECAUSE OF HANDICAPPING CONDITIONS, EXCEPT THAT A BOARD MAY REFUSE TO ADMIT AN ADJACENT DISTRICT STUDENT RECEIVING SERVICES UNDER CHAPTER 3323. OF THE REVISED CODE, IF THE SERVICES DESCRIBED IN THE STUDENT'S IEP ARE NOT AVAILABLE IN THE DISTRICT'S SCHOOLS;

(3) A REQUIREMENT THAT THE STUDENT BE PROFICIENT IN THE ENGLISH LANGUAGE;

(4) REJECTION OF ANY APPLICANT BECAUSE THE STUDENT HAS BEEN SUBJECT TO DISCIPLINARY PROCEEDINGS, EXCEPT THAT IF AN APPLICANT HAS BEEN SUSPENDED OR EXPELLED BY THE ADJACENT DISTRICT FOR TEN CONSECUTIVE DAYS OR MORE IN THE TERM FOR WHICH ADMISSION IS SOUGHT OR IN THE TERM IMMEDIATELY PRECEDING THE TERM FOR WHICH ADMISSION IS SOUGHT, THE PROCEDURES MAY INCLUDE A PROVISION DENYING ADMISSION OF SUCH APPLICANT.

(D) EACH SCHOOL BOARD SHALL PROVIDE INFORMATION ABOUT THE POLICY ADOPTED UNDER THIS SECTION, INCLUDING THE APPLICATION PROCEDURES AND DEADLINES, TO THE SUPERINTENDENT AND THE BOARD OF EDUCATION OF EACH ADJACENT DISTRICT AND, UPON REQUEST, TO THE PARENT OF ANY ADJACENT DISTRICT STUDENT.

(E) ANY SCHOOL BOARD SHALL ACCEPT ALL CREDITS TOWARD GRADUATION EARNED IN ADJACENT DISTRICT SCHOOLS BY AN ADJACENT DISTRICT STUDENT OR A NATIVE STUDENT.

(F)(1) NO BOARD OF EDUCATION MAY ADOPT A POLICY DISCOURAGING OR PROHIBITING ITS NATIVE STUDENTS FROM APPLYING TO ENROLL IN THE SCHOOLS OF AN ADJACENT DISTRICT THAT HAS ADOPTED A POLICY PERMITTING SUCH ENROLLMENT, EXCEPT THAT:

(a) A DISTRICT MAY OBJECT TO THE ENROLLMENT OF A NATIVE STUDENT IN AN ADJACENT DISTRICT IN ORDER TO MAINTAIN AN APPROPRIATE RACIAL BALANCE;

(b) THE BOARD OF EDUCATION OF A DISTRICT RECEIVING FUNDS UNDER 64 STAT. 1100 (1950), 20 U.S.C.A. 236 ET SEQ., AS AMENDED, MAY ADOPT A RESOLUTION OBJECTING TO THE ENROLLMENT OF ITS NATIVE STUDENTS IN ADJACENT DISTRICTS IF AT LEAST TEN PER CENT OF ITS STUDENTS ARE INCLUDED IN THE DETERMINATION OF THE UNITED STATES SECRETARY OF EDUCATION MADE UNDER SECTION 20 U.S.C.A. 238(a).

(2) IF A BOARD OBJECTS TO ENROLLMENT OF NATIVE STUDENTS UNDER THIS DIVISION, ANY ADJACENT DISTRICT SHALL REFUSE TO ENROLL SUCH NATIVE STUDENTS UNLESS TUITION IS PAID FOR THE STUDENTS IN ACCORDANCE WITH SECTION 3317.08 OF THE REVISED CODE. AN ADJACENT DISTRICT ENROLLING SUCH STUDENTS MAY NOT RECEIVE FUNDING FOR THOSE STUDENTS IN ACCORDANCE WITH SECTION 3313.981 OF THE REVISED CODE.

(G) THE STATE BOARD OF EDUCATION SHALL MONITOR SCHOOL DISTRICTS TO ENSURE COMPLIANCE WITH THIS SECTION AND THE DISTRICTS' POLICIES. THE BOARD MAY ADOPT RULES REQUIRING UNIFORM APPLICATION PROCEDURES, DEADLINES FOR APPLICATION, NOTIFICATION PROCEDURES, AND RECORD KEEPING REQUIREMENTS FOR ALL SCHOOL BOARDS THAT ADOPT POLICIES PERMITTING THE ENROLLMENT OF ADJACENT DISTRICT STUDENTS. IF THE STATE BOARD ADOPTS SUCH RULES, NO SCHOOL BOARD SHALL ADOPT A POLICY THAT CONFLICTS WITH THOSE RULES.

Sec. 3313.981. (A) THE STATE BOARD SHALL ADOPT RULES REQUIRING THE BOARD OF EACH CITY, EXEMPTED VILLAGE, AND LOCAL SCHOOL DISTRICT TO ANNUALLY REPORT THE NUMBER OF ADJACENT DISTRICT STUDENTS ENROLLED IN THE DISTRICT AND THE NUMBER OF NATIVE STUDENTS ENROLLED IN ADJACENT DISTRICTS, IN ACCORDANCE WITH A POLICY ADOPTED UNDER SECTION 3313.98 OF THE REVISED CODE. THE RULES SHALL PROVIDE FOR THE METHOD OF COUNTING STUDENTS WHO ARE ENROLLED FOR PART OF A SCHOOL YEAR IN AN ADJACENT DISTRICT.

(B) FROM THE PAYMENTS MADE TO A DISTRICT UNDER CHAPTER 3317. OF THE REVISED CODE, THE DEPARTMENT OF EDUCATION SHALL ANNUALLY SUBTRACT BOTH OF THE FOLLOWING:

(1) AN AMOUNT EQUAL TO THE NUMBER OF THE DISTRICT'S NATIVE STUDENTS REPORTED UNDER DIVISION (A) OF THIS SECTION WHO ARE

ENROLLED IN ADJACENT SCHOOL DISTRICTS MULTIPLIED BY THE ADJUSTED FORMULA AMOUNT FOR THE DISTRICT;

(2) THE EXCESS COSTS COMPUTED IN ACCORDANCE WITH DIVISION (F) OF THIS SECTION FOR ANY SUCH NATIVE STUDENTS RECEIVING SPECIAL EDUCATION AND RELATED SERVICES IN ADJACENT SCHOOL DISTRICTS.

(C) TO THE PAYMENTS MADE TO A DISTRICT UNDER CHAPTER 3317. OF THE REVISED CODE, THE DEPARTMENT OF EDUCATION SHALL ANNUALLY ADD BOTH OF THE FOLLOWING:

(1) AN AMOUNT EQUAL TO THE NUMBER OF ADJACENT DISTRICT STUDENTS REPORTED UNDER DIVISION (A) OF THIS SECTION ENROLLED IN THE DISTRICT MULTIPLIED BY THE ADJUSTED FORMULA AMOUNT FOR THE DISTRICT;

(2) THE EXCESS COSTS COMPUTED IN ACCORDANCE WITH DIVISION (D) OF THIS SECTION FOR ANY ADJACENT DISTRICT STUDENTS RECEIVING SPECIAL EDUCATION AND RELATED SERVICES IN THE DISTRICT.

(D) A BOARD PROVIDING SPECIAL EDUCATION AND RELATED SERVICES TO AN ADJACENT DISTRICT STUDENT IN ACCORDANCE WITH AN IEP SHALL, PURSUANT TO RULES OF THE STATE BOARD, COMPUTE THE EXCESS COSTS TO EDUCATE SUCH STUDENT AS FOLLOWS:

(1) SUBTRACT THE ADJUSTED FORMULA AMOUNT FOR THE DISTRICT FROM THE ACTUAL COSTS TO EDUCATE THE STUDENT;

(2) FROM THE AMOUNT COMPUTED UNDER DIVISION (D)(1) OF THIS SECTION SUBTRACT THE AMOUNT OF ANY FUNDS RECEIVED BY THE DISTRICT UNDER CHAPTER 3317. OF THE REVISED CODE TO PROVIDE SPECIAL EDUCATION AND RELATED SERVICES TO THE STUDENT.

THE BOARD SHALL REPORT THE EXCESS COSTS COMPUTED UNDER THIS DIVISION TO THE DEPARTMENT OF EDUCATION.

(E) NOTWITHSTANDING SECTION 3317.03 OF THE REVISED CODE:

(1) NO SCHOOL DISTRICT SHALL COUNT ANY ADJACENT DISTRICT STUDENT REPORTED UNDER DIVISION (A) OF THIS SECTION IN ITS ADM CERTIFIED UNDER SECTION 3317.03 OF THE REVISED CODE.

(2) EACH SCHOOL DISTRICT SHALL COUNT IN ITS ADM CERTIFIED UNDER SUCH SECTION, ANY NATIVE STUDENT ENROLLED IN THE SCHOOLS OF AN ADJACENT DISTRICT UNDER SECTION 3313.98 OF THE REVISED CODE.

(F) UPON REQUEST OF A PARENT, AND PROVIDED THE BOARD OFFERS TRANSPORTATION TO NATIVE STUDENTS OF THE SAME GRADE LEVEL AND DISTANCE FROM SCHOOL UNDER SECTION 3327.01 OF THE REVISED CODE, A SCHOOL BOARD ENROLLING AN ADJACENT DISTRICT STUDENT SHALL PROVIDE TRANSPORTATION FOR THE STUDENT WITHIN THE BOUNDARIES OF THE BOARD'S DISTRICT, EXCEPT THAT THE BOARD SHALL BE REQUIRED TO PICK UP AND DROP OFF A NONHANDICAPPED STUDENT ONLY AT A REGULAR SCHOOL BUS STOP DESIGNATED IN ACCORDANCE WITH THE BOARD'S TRANSPORTATION POLICY. PURSUANT TO RULES OF THE STATE BOARD OF EDUCATION, SUCH BOARD MAY REIMBURSE THE PARENT FROM FUNDS RECEIVED UNDER DIVISION (K) OF SECTION 3317.024 OF THE REVISED CODE FOR THE REASONABLE COST OF TRANSPORTATION FROM THE STUDENT'S HOME TO THE DESIGNATED SCHOOL BUS STOP IF THE STUDENT'S FAMILY HAS AN INCOME BELOW THE FEDERAL POVERTY LINE.